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COMMITTEE MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
STRATEGIC POLICY DEVELOPMENT

JOE SERNA, JR., CAL/EPA BUILDING
1001 I STREET
2ND FLOOR
COASTAL HEARING ROOM
SACRAMENTO, CALIFORNIA

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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Ms. Cheryl Peace

Mr. Gary Petersen

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Ms. Sally French, Staff

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Mr. Neal Johnson, Staff

Mr. Howard Levenson, Deputy Director, Permitting and
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Mr. Bert Wenzel, Staff

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Michael Blumenthal, Rubber Manufacturers Association

Mr. Gale Filter, DTSC

Mr. Bob Hoffman, DeMenno Kerdoon

Mr. Adam Johnson, Lawrence Livermore

Mr. Dennis Kazarian, E-Recycle of California

Ms. Mackenzie Love, Lawrence Livermore

Mr. Mark Murray, Californians Against Waste

Ms. Janice Oldmeyer, Onsite Electronic Recycling

Mr. Bill Ross, Safety-Kleen

Mr. Roy Schumacher, Thermal Fluids

Mr. John Shegerian, Electronic Recyclers

Mr. Robert Sulnick, Evergreen

Mr. Phill Vermeulen, Independent Waste Oil Collectors and Transporters

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1 PROCEEDINGS

2 CHAIRPERSON BROWN: We're on a tight schedule
3 this morning for commitments this afternoon as well. I'm
4 going to call the meeting to order and ask Kristen to call
5 the roll.

6 EXECUTIVE ASSISTANT GARNER: Chesbro?

7 COMMITTEE MEMBER CHESBRO: Here.

8 EXECUTIVE ASSISTANT GARNER: Mulé?

9 COMMITTEE MEMBER MULÉ: Here.

10 EXECUTIVE ASSISTANT GARNER: Peace?

11 COMMITTEE MEMBER PEACE: Here.

12 EXECUTIVE ASSISTANT GARNER: Petersen?

13 COMMITTEE MEMBER PETERSEN: Here.

14 EXECUTIVE ASSISTANT GARNER: Brown?

15 CHAIRPERSON BROWN: Here.

16 Thank you.

17 Does anybody have any ex partes to report?

18 Okay. I would like to remind -- no ex partes to
19 report.

20 Remind everybody that if you intend to speak
21 there are speaker slips in the back of the room and
22 agendas. And -- I guess I wasn't ready. I think we'll go
23 first to Item B. We'd like to take up shortly -- item B
24 we're going start with, which is the -- no. Item B is the
25 one we're taking up after Ted. We're going to go first to

1 C. How about C? Okay. We're ready for C.

2 PROGRAM DIRECTOR LEVENSON: We are ready.

3 CHAIRPERSON BROWN: Board Item 7.

4 PROGRAM DIRECTOR LEVENSON: Thank you, Madam

5 Chair and good morning, Board members. I'm Howard

6 Levenson with the Sustainability Program.

7 Item 7 or Item C for the Committee is the

8 Consideration of Approval to the Legislature on the Waste

9 Tire Recycling Report.

10 And as you know, the Board is charged with

11 providing the Legislature with the report by July 10th on

12 options and statutory changes that are needed to increase

13 the waste tire recycling rate. We brought a draft of the

14 report to you in March and received specific directions on

15 how to revise and finalize the report. That is what is

16 before you today.

17 With that, Sally will make a very short

18 presentation on some of the major changes that we made and

19 what's in the report. And then be happy to receive any

20 further direction.

21 (Thereupon an overhead presentation was

22 presented as follows.)

23 MS. FRENCH: Hi. This is Sally French.

24 Consideration of Approval of the Report to the

25 Legislature Regarding the Waste Tire Recycling Management

1 Program, Agenda Item 7, Committee Item C.

2 --o0o--

3 MS. FRENCH: Background. Currently, 26 percent
4 or 11.4 million in 2006 of the waste tires generated
5 annually are not diverted into productive end uses. The
6 fund has a large reserve and the proposed report options
7 to increase waste tire diversion rates. Report to the
8 Legislature, addresses these issues. The draft report was
9 discussed at the March Strategic Policy Committee meeting.

10 --o0o--

11 MS. FRENCH: The diversion rates currently are 74
12 percent in 2006, and we are projecting 83 percent in 2010.

13 --o0o--

14 MS. FRENCH: The current fund balance is 42
15 million. And there's going to be a transfer to the Air
16 Resources Board this fiscal year of \$4 million, which will
17 bring that down to 37 million. And our projected fund
18 balance would be 58 million in 2009-10.

19 --o0o--

20 MS. FRENCH: The Board directed staff to include
21 five specific options.

22 Option 1: Expand the public education outreach
23 on the tire sustainability inflation. To reduce the
24 amount of tires generated annually, staff suggested three
25 ideas: Expending the current community education

1 campaign, partnering with the Air Resources Board on
2 outreach programs and expanding outreach to
3 California-based trucking firms regarding retreads. Staff
4 suggest one to three million per year for three years.

5 --o0o--

6 MS. FRENCH: Option 2, establish new equipment
7 loan program. New equipment loan program to provide
8 appropriate low interest loans consistent with existing
9 RMDZ loan program. The loans would be to businesses for
10 equipment with preferences for TDA related equipment.
11 Loans would be available anywhere in the state, and staff
12 should suggests three to five million per year for five
13 years.

14 --o0o--

15 MS. FRENCH: Option 3: Increased the
16 tire-derived aggregate civil engineering efforts.
17 Increase the level of support to contracts and interagency
18 agreements and provide technical assistance and
19 construction management, research new applications, and
20 implement new civil engineering TDA application grant
21 program.

22 Staff suggests five to seven million for the
23 first two years and then three to five million for the
24 following two years.

25 Staff also suggested revising Public Resource

1 Code Section 43889.3 to require Caltrans to include in its
2 annual report the number of California generated waste
3 tires used in its projects each year.

4 --o0o--

5 MS. FRENCH: Option 4, refocus and expand the
6 Rubberized Asphalt Concrete Grant Program. We will
7 combine the solicitation of the RAC Grant Programs, create
8 several levels of funding within the program. The RAC
9 grant program would establish a cooperative purchasing
10 options for rural jurisdictions.

11 Staff suggests one to two million per year for
12 three years.

13 --o0o--

14 MS. FRENCH: Option 5, expand TDP grant program.
15 This is a very popular program in that it's oversubscribed
16 each year.

17 Staff is suggesting providing an additional one
18 to three million per year for three years.

19 --o0o--

20 MS. FRENCH: Other considerations. To continue
21 to examine modifying the current tire storage requirements
22 also suggesting amending Public Resource Code Section
23 42889.4 to require the Air Resource Board to conduct
24 testing of emissions from facilities which tires are being
25 incinerated and compared with emissions using other types

1 of materials.

2 --o0o--

3 MS. FRENCH: A summary of potential options and
4 costs is in the table.

5 One is the expanding the public education
6 outreach.

7 Two, the loan program.

8 Three, the TDA.

9 Four, the RAC Grant Programs.

10 Five, the TDP grant programs.

11 With total dollars in year one of 11 to 20
12 million. Year two, 11 to 20 million. Three year, 11 to
13 20 million. Year four, three to five million.

14 --o0o--

15 MS. FRENCH: Implications for the fund and the
16 fee. Three scenarios using the mid-point funding of these
17 ranges were created. If all five options were
18 implemented, then expending 48.5 million would have a
19 negative balance of 895,000 in fiscal year 2014/15.

20 If fees were reduced by 25 cents beginning in
21 2011 and none of the five options were implemented, funds
22 would have approximately 5.1 million remaining in fiscal
23 year 2014/15.

24 If all five options were implemented and the fee
25 reduced by 25 cents beginning in 2011, the fund would have

1 a negative balance of 38.4 million in fiscal year 2014/15.

2 --o0o--

3 MS. FRENCH: I wanted to point out on page 23 the
4 summary of options and resources. The second sentence we
5 had revised the cost, and there's a range there. It was
6 omitted that the sentence should read, "In addition, it's
7 estimated that 6 to 7 1/2 additional staff will be needed
8 to implement these options and an estimated cost of
9 \$577,353 to \$842,363." So we'll add that seven and a half
10 in there.

11 That concludes my presentation. And staff
12 requests the Board approve the proposed report options to
13 increase the waste tire diversion rates, report to the
14 Legislature, Attachment 1, and adopt Resolution 2008-89.

15 CHAIRPERSON BROWN: Thank you, Sally. Very good.
16 Very good.

17 Do we have any questions of staff or comments?

18 COMMITTEE MEMBER PETERSEN: Yes, Madam Chair.
19 Question. On the fundamental market issue, the lowest
20 cost management option is disposal for the waste tires.
21 In certain areas of the state regions is their cost is
22 higher because their tip fees are higher so recycling is a
23 better option? Is that what -- I'm saying it's a regional
24 thing.

25 COMMITTEE MEMBER MULÉ: I believe last month when

1 we heard this item we did receive testimony from I think
2 it was Terry Leveille that indicated that disposal is not
3 -- disposal into landfills is not the cheapest option.

4 COMMITTEE MEMBER PETERSEN: Right. We're seeing
5 tip fees go up.

6 COMMITTEE MEMBER MULÉ: That point was made.

7 PROGRAM DIRECTOR LEVENSON: We've seen tip fees
8 go up in Azusa and corresponding reduction and the some of
9 the flow of tires into Azusa.

10 COMMITTEE MEMBER PETERSEN: So is that still what
11 we should say here? Page three

12 CHAIRPERSON BROWN: What page are you looking at,
13 Gary.

14 COMMITTEE MEMBER PETERSEN: Page three, first
15 paragraph. Agenda item 7. Sorry about that.

16 PROGRAM DIRECTOR LEVENSON: Sorry, Gary. I'm not
17 sure where you are. In the report itself or the agenda
18 item?

19 CHAIRPERSON BROWN: In the agenda item.

20 COMMITTEE MEMBER PETERSEN: Top of page 3. It's
21 regional as far as market price goes, right.

22 PROGRAM DIRECTOR LEVENSON: We're looking to see
23 if that statement is also in the report. What we're
24 transmitting is the report. So we can look and see if
25 that is in the report and correct it.

1 COMMITTEE MEMBER PETERSEN: Okay. Great.

2 Thanks.

3 CHAIRPERSON BROWN: Thank you, Howard.

4 Cheryl.

5 COMMITTEE MEMBER PEACE: I still have some
6 comments. I want to thank staff for doing this. I know a
7 lot of work went into it.

8 And some of the recommendations I have are just
9 basically kind of to make it a little more concise and to
10 clean it up a little bit.

11 If I could start with the table of contents, the
12 LAO asked us to make recommendations to increase waste
13 tire diversion rate. They also asked us to come up with
14 policy choices warranting legislative evaluation and
15 statutory changes to increase the waste tire diversion
16 rate.

17 So what I would recommend in the table of
18 contents is to have a title that says, "Recommendations to
19 Increase the Waste Tire Diversion Rate." And that can be
20 the one, two, three, four, five.

21 And then another heading that would say, "Policy
22 Choices Warranting Legislative Evaluation and Statutory
23 Changes to Increase the Waste Tire Diversion Rate." And
24 that would be:

25 One, conduct the life cycle analysis.

1 Two, re-evaluate the tire-derived fuel
2 prohibition.

3 And this is a question I need to ask, because you
4 did mention I think on page 19 of the report another thing
5 that you would like to see changed statutorily in
6 requiring Caltrans -- so if that's something we really
7 want, maybe we should list that as number three, require
8 Caltrans report number of California waste tires. So if
9 you think --

10 PROGRAM DIRECTOR LEVENSON: If we split the
11 report into those two groups, that would definitely fit in
12 the second group you're describing.

13 COMMITTEE MEMBER PEACE: If we did think that's
14 important and we want to make the recommendation, it would
15 be one, two, three. Life cycle analysis, re-evaluate
16 tire-derived fuel prohibition, and three, require
17 Caltrans. I just think that makes it a little more clear,
18 little more concise that's what they were asking for.

19 And I guess when you were talking about the
20 implications of the fund and the fee, whether we reduce
21 those, whatever, I'm just wondering -- I'm thinking that
22 shouldn't be in the report. That's not what they asked
23 for. They didn't ask us to do that. I always hesitate to
24 put more in the report than what they ask for.

25 CHAIRPERSON BROWN: I agree. That's a good

1 point, Cheryl. If they ask for a specific thing, we
2 should answer the specific question and line of thinking
3 and not speculate and start adding more to what they're
4 actually seeking.

5 COMMITTEE MEMBER PEACE: Another clean up --

6 CHAIRPERSON BROWN: Do you have a question,
7 Howard?

8 COMMITTEE MEMBER CHESBRO: Shall we discuss them
9 as we go or wait? Because I just want to say I certainly
10 disagree with reopening the whole tire-derived fuel
11 discussion. I thought that it had been taken out because
12 of our direction and that there's pretty strong
13 legislative indication they're not interested in that.

14 And the industry hasn't asked for it that I know of. And
15 I think the focus on reduction, reuse, and recycling at
16 the higher end of the hierarchy is where we ought to be.

17 PROGRAM DIRECTOR LEVENSON: In March, we brought
18 that item forth or suggestion forth, and it was an actual
19 recommendation the Board asked us to not include it as a
20 specific recommendation but to still mention it as a
21 possibility for the Legislature to consider.

22 CHAIRPERSON BROWN: I think where I would be
23 comfortable is that the report asks us to look at ways to
24 reduce the ten million tires that are still going to
25 disposal and contemplate the expending the entire fund and

1 how we can get it out. If they're not listed as our
2 recommendations but listed as options to look at or to at
3 least mention, I think it's an omission of especially in
4 the context of nationally. The percentage of tires that
5 are diverted from landfills nationally is higher than here
6 in California. And we've done a phenomenal job of
7 diverting tires in California without the use of
8 incineration.

9 But I think that we need to be sure that, you
10 know, especially in uses like cement kilns where it's
11 currently being used. You know, we have AB 32
12 considerations and I think we need to at least be able to
13 say with good science what's behind it. So I would be
14 more comfortable with a look at studies that involve tire
15 emissions.

16 COMMITTEE MEMBER PEACE: And research.
17 Especially when I was at the International Tire Conference
18 last week there was a session on playground covers and how
19 long they last. And so I asked what happens to playground
20 covers at their end of life. Basically they go to
21 landfill.

22 Maybe with some research, we could find out that
23 maybe at their end of life they can be used as a fuel
24 instead of going to a landfill. I'm just asking they open
25 that up to give us a chance to look at some of these

1 things. Again that's just an option.

2 COMMITTEE MEMBER PETERSEN: Madam Chair, there
3 are some newer technologies coming on that are low
4 temperature that actually break down the components of the
5 tires into different products. And those low temperature
6 technologies are coming on line now. We have to be open
7 enough to explore what's going on in the marketplace.
8 Because we could get down to zero tires going to a
9 landfill. That's my goal.

10 CHAIRPERSON BROWN: Well, you know, I understand
11 Member Chesbro's concern. We certainly have a prohibition
12 and it's in statute. And you know, we share his concern
13 that we just don't want to recklessly go back and
14 advocate.

15 But Cheryl, you circulated this document that --

16 COMMITTEE MEMBER PEACE: I haven't given it to
17 staff yet because we wrote it up this morning. Actually,
18 I think the one I circulated should have a better title on
19 it. Instead of saying, "Options for Statutory Change," I
20 think it should say like the report said, "Policy Choices
21 Warranting Legislative Evaluation/Statutory Changes to
22 Increase Waste Tire Diversion Rate."

23 COMMITTEE MEMBER CHESBRO: Madam Chair, if we're
24 going to consider that as a change, I would like to have
25 it as a separate motion to amend so I can not support it.

1 CHAIRPERSON BROWN: Okay.

2 COMMITTEE MEMBER PEACE: Again, just some cleanup
3 things as I went through this.

4 Under the recommendations, where it just says,
5 "Expand public education and outreach on tire
6 sustainability/inflation," I think for the way it's
7 written it should be, "Expand public education and
8 outreach on tire sustainability/retreads/RAC," since in
9 that number one section you mention all those things, it
10 was a lot more than just tire sustainability/inflation.
11 You mentioned tire sustainability, the outreach to
12 retreads and also the more outreach on RAC.

13 And then on page 13 you do the same thing. That
14 says, "Expand public education and outreach on tire
15 sustainability/retread/RAC."

16 And then just going through this, like I said,
17 instead of saying, "refocus RAC grant programs," we just
18 say, "increase the RAC grant programs."

19 And I guess I have a little problem with the
20 whole thing about ratcheting down the grants. Maybe
21 everybody doesn't agree with me. To me, that was more
22 like a policy thing. I don't know why it needed to be in
23 there. Because as we go through the Five-Year Plan, we'll
24 probably be discussing how we want those programs -- how
25 they want the grants to look. I don't know if we want

1 to --

2 CHAIRPERSON BROWN: Are you on page 19 now?

3 PROGRAM DIRECTOR LEVENSON: I could respond. Our
4 intent there was simply to give the Legislature an idea of
5 where staff was thinking of going.

6 But we are coming back to you either next month,
7 more likely July, with the new criteria item for all the
8 RAC grant programs which will basically encompass these
9 other ideas. So if you wanted to eliminate the
10 description of the re-focusing and just keep the
11 additional funding revision in there.

12 COMMITTEE MEMBER PEACE: I think I would feel
13 more comfortable even if that's the way we might go. It's
14 kind of a policy thing I think we'll be discussing as we
15 go on with the grants and decide what's going to be in the
16 Five-Year Tire Plan next time around. I think it has to
17 do with policy. I just kind of would like it to stay
18 funding for the RAC grant programs will remain separate.
19 That's okay to leave in there. The funding can remain
20 separate. And only the solicitation could be combined.
21 When we get more into the details, I'm thinking we leave
22 that as a policy decision.

23 CHAIRPERSON BROWN: Are there substantive changes
24 forward? I know we talked about six. Do you want to go
25 into what's considered other considerations and --

1 COMMITTEE MEMBER PEACE: Yeah. That's what this
2 was. And again other considerations to me would be called
3 policy choices warranting legislative evaluation/statutory
4 changes to increase the waste tire diversion rate. As I
5 said, I did have something written up. But basically it
6 is what is here but a little more -- it has the Air Board
7 recommendation to go to revise the thing with the Air
8 Board to do the study.

9 Also has the section on deleting -- looking into
10 deleting the section that says that we cannot do any
11 research into tire-derived fuel.

12 CHAIRPERSON BROWN: Well, let me clarify. And I
13 know Member Chesbro knows this. This is a report to the
14 Legislature. This is not a commitment by this Board to
15 seek statutory change regarding study or anything related
16 to incineration of tires. This simply contemplates or
17 suggests to the Legislature that if they're looking for
18 other options, that certainly is one that's used in the
19 other states who have a higher diversion rate than we do.
20 I don't want to suggest in any way, shape, or form that
21 this Board is making a policy statement to seek any
22 statutory change.

23 COMMITTEE MEMBER CHESBRO: Madam Chair, it is one
24 of the few things that the Legislature has said don't do.
25 And we're going say, well, here's an option, folks.

1 And secondly, it's my distinct impression that --
2 and I hesitate to even say this publicly for the reason
3 I'm about to state. But that the industry's concern is
4 that bringing a lot of public scrutiny and attention to
5 existing practices is not beneficial. I mean, the
6 arguments about whether it's a good idea from an
7 environmental standpoint are valid arguments. But there
8 is a lot of it going on right now. And I don't know that
9 a big debate about it is viewed by the industry as
10 helpful. It might cause things to go backwards rather
11 than forward in terms of utilization of tires in cement
12 kilns. I don't think we should include it.

13 COMMITTEE MEMBER MULÉ: Madam Chair, I think
14 personally we would be remiss if we didn't include it as
15 an option. Where again as you stated earlier, we're not
16 promoting it or supporting it recommending it. We're
17 stating this is an option for the Legislature to consider.

18 COMMITTEE MEMBER PEACE: Especially in light of
19 the fact there's seven gallons of oil in each tire and the
20 cost of oil is sky rocketing. It's something maybe we
21 should re-evaluate and reconsider -- not us, but the
22 Legislature.

23 CHAIRPERSON BROWN: I think as we go forward, we
24 can separate out that section for a separate concurrence
25 on this with the inclusion or somehow we'll separate out

1 the motion so that Member Chesbro is not -- my make his
2 views known. And we'll separate it out.

3 COMMITTEE MEMBER PEACE: Also we get to the end,
4 the implications for the fund. You do say at the end of
5 the first paragraph the fee is to sunset on January 1st,
6 2015, which is fine. I think we should just leave it
7 there.

8 And then you go on to say what would happen if we
9 dropped the fee, and that it should be re-evaluated in
10 2014. I think all that should be eliminated basically to
11 say the fee is to sunset on 2015. Leave it at that. And
12 I think we need to make it a more clear if we're leaving
13 in these ranges of costs, we're not coming -- you're not
14 asking us to pick a number. You want to leave the ranges
15 in there. If we leave the ranges in there, I think maybe
16 we should put if there some where because you do say if we
17 implement everything at the highest amount, we'll be over.
18 I think we should put in there something about these are
19 ranges of expenditures recommended. And maybe with
20 further discussion, the amount will equal the fund balance
21 as with further discussion as we go through the -- develop
22 the Five-Year Tire Plan, that the amounts will equal the
23 fund balance.

24 CHAIRPERSON BROWN: May I suggest that possibly
25 some of the finite wording we can work out in some edits

1 between now and next week. And, you know, that's sort of
2 crafting and wording changes that explain the ranges and
3 give the Board the latitude to make decisions in the
4 Five-Year Tire Plan as to what funding level that we
5 certainly -- I think what she's trying to say, Sally, is
6 we won't fund everything at the highest level because that
7 will exceed the fund balance. We recognize that. But
8 this gives us the latitude in the Five-Year Tire Plan to
9 make decisions.

10 COMMITTEE MEMBER PEACE: Thank you, Madam Chair.
11 That was a lot more clear.

12 CHAIRPERSON BROWN: There is a LOOK of confusion.
13 But I think some of this wording can be worked out between
14 now and Tuesday for some specifics. And then --

15 COMMITTEE MEMBER PEACE: And then again when you
16 have all these charts and stuff on what would happen if we
17 reduce --

18 CHAIRPERSON BROWN: The charts aren't part of the
19 report, are they?

20 PROGRAM DIRECTOR LEVENSON: Yeah. The two charts
21 on -- well, they were part of the report. But if you're
22 going to eliminate the discussion of changes -- potential
23 changes to the fee and the fund implications, those charts
24 would go.

25 CHAIRPERSON BROWN: I think there should be a

1 discussion of the fact that the Board will take it up in
2 the time frame that's required by the law. And I think
3 just the discussion that the Board will take up, re-visit
4 the issue of the tire fund.

5 I think the last paragraph on page 24 the Board
6 recommends the tire fee be re-evaluated. I think we
7 probably need to do it sooner than 2014.

8 COMMITTEE MEMBER PEACE: If we leave it in there,
9 it needs to be --

10 CHAIRPERSON BROWN: 2013 to do a thorough
11 stakeholder process. And we can include not later than
12 2013 so that --

13 COMMITTEE MEMBER PEACE: So we might want to put
14 that after the first paragraph. When you say the fee is
15 to sunset on January 1st, 2015, we might want to put it in
16 there. The Board recommends the tire fee to be
17 re-evaluated in --

18 CHAIRPERSON BROWN: Not later than 2013 to
19 determine if the tire fee should be adjusted and extended.
20 I mean, that gives us the latitude to look at it at any
21 time between this report and that time frame.

22 Does anybody have any changes?

23 COMMITTEE MEMBER PEACE: Those were the things in
24 the report, but I still have some questions about the
25 dollar amounts. I don't know if anybody else does or

1 we're going to talk about that. But I still had some
2 concerns.

3 CHAIRPERSON BROWN: I think we need to go through
4 the specific dollar amounts. We can do the edits and we
5 do --

6 COMMITTEE MEMBER PEACE: I'll be glad to help
7 staff or work with you if you want to see what kind of
8 little notes I've made, if that would be helpful. I would
9 be glad to work with you.

10 CHAIRPERSON BROWN: The dollar amounts on the
11 graph on page 23. Okay.

12 PROGRAM DIRECTOR LEVENSON: If I can just say one
13 thing about the ranges. Including these as ranges gives
14 the Board the flexibility for further discussions with the
15 Legislature in the budgetary process. Or if we do get
16 expenditure authority, in subsequent revisions to the
17 Five-Year Tire Plan, reallocation item. That's why we
18 expressed those as ranges. Clearly, we couldn't add them
19 up to any specific proposal to be more than what's in the
20 fund at that time.

21 CHAIRPERSON BROWN: These are amounts in addition
22 to what's currently in the Five-Year Tire Plan.

23 PROGRAM DIRECTOR LEVENSON: That's correct.

24 CHAIRPERSON BROWN: What's not reflected here is
25 the total budget for some of these items in here.

1 PROGRAM DIRECTOR LEVENSON: Correct.

2 CHAIRPERSON BROWN: Cheryl, did you have a
3 question on a couple of them?

4 COMMITTEE MEMBER PEACE: Obviously, I still don't
5 think we need one to three million dollars in public
6 outreach. I don't think we need that much.

7 Another concern I have was when you talked
8 expanding the RAC grant programs and talked about public
9 outreach to expand those, but you didn't put any more
10 money into them. The only money here is for the one to
11 two million dollars for the rural co-op.

12 PROGRAM DIRECTOR LEVENSON: No. That would be
13 one to two million dollars for the entire set of RAC
14 programs with the allocation in the different parts of the
15 RAC program to be determined by the Board. We would bring
16 the criteria back to you regardless of what amount of
17 money we have.

18 COMMITTEE MEMBER PEACE: So let me understand
19 this. Because you only have in there one to two million
20 more than what's already in the Tire Plan. I just don't
21 think that's enough, because you already said one to two
22 million was going to go to two rural co-ops. If we're
23 going to be out there -- did I read that right? That you
24 were suggesting one to \$2 million --

25 PROGRAM DIRECTOR LEVENSON: Go to the revised

1 program, referring to the entire RAC program.

2 CHAIRPERSON BROWN: The rural co-ops is part of
3 that, but not in total.

4 COMMITTEE MEMBER PEACE: If you did want to say
5 expand the RAC grants, I still think one to \$2 million
6 isn't nearly enough if we're going to be out there trying
7 to promote it with community outreach and everything.
8 That's not nearly enough. When I look at TDA, there's
9 already 3.75 in there. And we haven't even used nearly
10 that amount this year. I'm thinking that doesn't need to
11 be quite five to seven million. We can take some of that
12 and put it into the RAC grants.

13 PROGRAM DIRECTOR LEVENSON: The TDA area is the
14 area where we see for larger scale projects, demo projects
15 and research in order to convince public works officials
16 and engineers of the validity of it. So those tend to
17 take more funds than the RAC grants. We had RAC grants
18 for a long time.

19 The question is how do you balance the issue of
20 if you continue to subsidize them with moving into a more
21 sustainable marketplace. I think what we tried to do is
22 reflect that in what we're thinking of for the future
23 revisions of the program. If you start to wean folks off
24 of the full incentive. It's up to the Board in terms of
25 how you wish to allocate those funds. We're open to that.

1 CHAIRPERSON BROWN: I think one thing of concern
2 in looking at some of these numbers is the amount of money
3 that is added to TDA, and we're still leaving money on the
4 table this year. That's the concern that I have that
5 maybe we need to put a little bit more money the first
6 year in RAC and, you know, build TDA. Because we're still
7 trying to get that confidence in the civil engineering
8 community and amongst local government. So maybe it's
9 less in the first year and we increase it over the out
10 years, where RAC maybe we continue to fund at a high level
11 and ratchet it down so we do this thing.

12 But maybe the thing is we've created for
13 ourselves ranges to give ourselves the maximum flexibility
14 in the development of our Five-Year Tire Plan, but showed
15 them we have a thoughtful plan of how to move these
16 programs forward.

17 So, Cheryl, can we maybe direct staff to look at
18 broadening the range for RAC and maybe ratchet down TDA,
19 but maybe within the ranges rather than make a firm
20 commitment, you know, for one of the other.

21 I mean, I think the most important thing here is
22 to show the Legislature that we have a thoughtful program
23 and that we are working towards increasing TDA contracts.
24 We've seen and we have proven success in RAC. It's
25 gaining traction. We do want to see the program begin to

1 be self-sustaining somewhere in the future. But, you
2 know, it still needs the subsidy especially in the near
3 term in order to get people committed.

4 PROGRAM DIRECTOR LEVENSON: That's no problem for
5 us. We need some direction on what you want the ranges to
6 be for TDA and RAC.

7 CHAIRPERSON BROWN: Well, why don't we take a
8 million off of TDA and give it to RAC?

9 COMMITTEE MEMBER PEACE: I would like two
10 million. Because it's already 2.75. And even if we took
11 off two million, you're still saying three to five million
12 more on top of the 3.75 million. That's a lot.

13 CHAIRPERSON BROWN: In TDA.
14 Here's another question.

15 PROGRAM DIRECTOR LEVENSON: I'm seeking your
16 direction on this.

17 CHAIRPERSON BROWN: This is a recommendation to
18 the Legislature. This is not an expenditure item. So
19 it's really fluid. That's a much better word than
20 Monopoly money. We haven't made the determination and in
21 an allocation item in the Five-Year Tire Plan we're
22 committing funds. So --

23 PROGRAM DIRECTOR LEVENSON: If we change the TDA
24 and the RAC in years one and two to both read three to
25 five million in years one and year two for each of those

1 line items, the sums at the bottom would change a little
2 bit and still give us flexibility.

3 CHAIRPERSON BROWN: I'm good with that.

4 And then the rest of the changes that Member
5 Peace has suggested, she can forward to staff. And you
6 guys can make some edits and changes before Friday
7 hopefully, afternoon, close of business.

8 PROGRAM DIRECTOR LEVENSON: Perhaps we can work
9 with your advisor on carrying through some of those
10 changes and we can get that revised and then to the public
11 system. Shoot for Friday.

12 CHAIRPERSON BROWN: Okay. That would be good.

13 Thank you for all your work on this, Cheryl.

14 We do have one speaker that I would like to
15 invite up before we take a motion on this. Michael
16 Blumenthal.

17 MR. BLUMENTHAL: Thank you, Madam Chair. My name
18 is Michael Blumenthal. I'm the Vice President of the
19 Rubber Manufacturers Association that represents the US
20 tire manufacturers.

21 I have a couple of random ideas to say about this
22 proposal. I'm trying to go down in the order that you had
23 them.

24 The RMA completely supports the idea of the use
25 of retreads in truck and heavy truck tires. Our concern

1 is that just about every tire that is available to be
2 retreaded is currently in use.

3 The question that we have is how many more tires
4 can you get to go into this market. We would think that
5 you'll probably have to import them from other states or
6 from off-shore to meet any increased demand for retread
7 tires.

8 So, you know, I do think it's worthwhile to move
9 ahead with the PR campaign and the education campaign.
10 Certainly tire care and maintenance is very important.
11 But I think you need to take a close hard look at how many
12 tires would be available that are not currently being used
13 to go into the retread market.

14 I can tell you that all of our major members are
15 of the biggest companies in the retread industry and their
16 supplies are pretty tight. So I don't know how much extra
17 room is going to be there for tires that come out of the
18 waste stream here in California.

19 Number two, on tire-derived aggregate, couple of
20 odds and ends.

21 Number one, you talked about doing a
22 demonstration project, sort of series of demonstration
23 projects. I think that is a good idea. I would just
24 suggest the following. That instead of actually going
25 ahead and doing the entire program then saying here it is,

1 look at it. It's very nice. I would suggest that you
2 invite the county engineers to come to that site when it
3 is in construction. They can see how the tires are being
4 put in there. They can see how the construction goes.
5 They can understand the hands-on ideas. Because otherwise
6 all they're going to see is mound of dirt, you know, which
7 doesn't do them any real good. This needs to be show and
8 tell. Which -- and by the way, no one is doing this
9 currently. When they say a demonstration project, that's
10 a code word for yes, we can yes this to death and wait
11 another five years before we have to do any commitments
12 because we want to wait and see if this project is going
13 to work. That's been done around the country. It's one
14 of our pet peeves.

15 So when you talk to Caltrans and you get Dana
16 Humphrey involved in all this stuff there, make sure there
17 is an invitation to other engineers in the area to come
18 and view what you're doing. We have the same -- we're
19 working with the State of New York on the same concept.
20 Let them do a hands-on job. Otherwise, you will not get
21 the bang for the money you're putting into this
22 demonstration projects.

23 I do think you need to continue your outreach on
24 TDA. I think part of the problem is they don't understand
25 the two most important factors here. One is that there

1 are engineering specs. And two, it does save Caltrans
2 money.

3 We know that at the Dixon Landing job it saved
4 Caltrans over \$400,000. That information should be out
5 there. We have this in a case study that we're using
6 nationwide. Seems like everybody but the folks here in
7 California are aware that saved Caltrans money. You need
8 to continue the outreach.

9 I have no problem moving the money around until
10 you get the outreach done. But at some point in time, you
11 do have to have the education out there to let them know
12 there are the specs. It will save them money, where it
13 can be done. And then get into the demonstration
14 projects, the other projects, stuff like that.

15 As far as the grants for ground rubber, I know
16 you're going to move ahead with this no matter what we say
17 or do. But I would caution you to understand what the
18 supply of ground rubber is like before you commit the full
19 amount of funds. The reason why we suggest this is there
20 are going to be three basis problems.

21 One, if you put out all the grant money at once,
22 there might not be enough supply from California generated
23 ground rubber to meet it.

24 Two, it's going to increase the price of ground
25 rubber.

1 And three, you're going to have spot shortages of
2 ground rubber for seasonal markets. And then you're going
3 to get in this argument there's not enough rubber. How
4 much you have to pay for it.

5 So your staff is doing the Business Assistance
6 Program a market review. And I'm looking at the amount of
7 rubber that is being produced here in the state. I think
8 before you commit the funds, you need to take a look at
9 what the supply of rubber is and what is the projected
10 supply of rubber will be relative to the amount of grants
11 you have so you don't adversely impact the supply and cost
12 factors of that marketplace.

13 Also think you need to take a long, close, hard
14 look at the cost per tire that you are going to be
15 spending. Once upon a time, it was eight dollars. And
16 then it was four dollars per tire. I think you want to
17 try to drive that down as low as possible so you don't
18 have the stigma the only way the market is going to work
19 is if it is subsidized by the State. You have the benefit
20 of having a large budget. Most of the states do not.
21 Since California is viewed as a leader, the other markets
22 in the other states will look at this. And we don't need
23 that kind of criticism in the marketplace.

24 As far as tire-derived fuel is concerned, as we
25 mentioned before, there's no great outcry from the

1 industry to be using it. I will tell you that this
2 afternoon I will be e-mailing Howard a report from the
3 Portland Cement Association. They just finished a
4 multi-year review of air emissions from kilns. It's hot
5 off the press. I just got it this morning. So I'll send
6 it to Howard so you can look at it and share it. The
7 information is all positive there.

8 But I agree with Senator Chesbro. I think if you
9 go back to that market system, nothing but create more
10 headaches and problems. And like I said, I don't see the
11 TDF marketplace jumping up and down for grant. Just give
12 them a fair shake at the marketplace. I do have one
13 suggestion about your terminology.

14 COMMITTEE MEMBER PEACE: I don't think any of us
15 suggested we give any grants to cement kilns or anything.
16 This is just asking them to do --

17 MR. BLUMENTHAL: Life cycle cost analysis. I
18 think that's a good idea, but that idea was raised and
19 knocked down once before.

20 But as far as your terminology is concerned, I
21 would hope you would get away from the word of
22 incineration. The term is energy recovery. Incineration
23 means that you burn it with no energy recovery like in a
24 waste-to-energy plant. That is not what tires are being
25 used for. It's being used for waste recovery, energy

1 recovery. Not incineration. That gets into the popular
2 vernacular. We have to fight that all the way through.
3 It's a negative term. And I would hope you move away from
4 that one.

5 And finally, I would hope that over the course of
6 next five years when you do your biannual, annual review
7 on the Five-Year Plan that you do take a look at the
8 effectiveness of these expenditure programs. I think
9 that's part and parcel of any kind of expenditures. I
10 think it's important to take a close hard look at the
11 impact of these additional grants and programs on the
12 diversion ratio and especially on the ground rubber
13 marketplace. I think going into there with a lot of money
14 at limited supplies may have some impacts you may not
15 particularly care for.

16 With that, I thank you.

17 COMMITTEE MEMBER PETERSEN: Madam Chair, do we
18 have -- picking up on what Michael said about having
19 people who could be potential customers to using this type
20 of material go visit a demonstration site and see it being
21 done?

22 CHAIRPERSON BROWN: You took the words right out
23 of my mouth.

24 Actually, I wanted to first say thank you,
25 Michael, also for speaking. Fortunately, this is not an

1 allocation item. We're not committing funds this month.

2 I know you'll be very actively involved in the review of
3 the Five-Year Tire Plan and participate in that review.

4 And so, you know, the discussion of the ground
5 rubber, how much money we're allocating, that's not today.
6 That's over the next year starting in I believe September.
7 This is simply a report to the Legislature on the
8 possibilities of how additional funds could be expended to
9 address the ten million tires.

10 But I believe the allocation item regarding TDA
11 was maybe last month for the demonstration project. And I
12 thought that the discussion surrounded inviting engineers
13 and people to look at it during the phase. That's already
14 been thought of by our staff and they're on top of it.
15 But we always like to give them an opportunity to tell us
16 how thoughtful they are in the development of these
17 programs. So anyway, we did have that discussion.

18 I'm not forgetting anything, am I?

19 PROGRAM DIRECTOR LEVENSON: You're absolutely
20 correct.

21 COMMITTEE MEMBER CHESBRO: Madam Chair, for the
22 seek of expediting things rather than a separate motion, I
23 suggest you just go ahead and take the main motion on the
24 item, and I'm just make my own decision.

25 CHAIRPERSON BROWN: What I was going to suggest

1 and what I think may work, since we do have some changes,
2 I'd like to entertain a motion to include the suggested
3 policy options that Member Peace has circulated. And
4 depending on where we go with that after a vote, then we
5 can direct staff to work with Member Peace on any changes
6 that are agreed to or not agreed to and bring it back to
7 the Board next Tuesday after revisions have been made.
8 But take this in a vote today as a motion on whether we
9 consider these suggested changes to the document. Does
10 that work, Elliot, if we do it like that?

11 STAFF COUNSEL BLOCK: Sure.

12 CHAIRPERSON BROWN: Okay. Can I have a motion?

13 COMMITTEE MEMBER MULÉ: Madam Chair, I'd like to
14 move Resolution 2008-

15 CHAIRPERSON BROWN: We're moving changes.

16 COMMITTEE MEMBER MULÉ: So we're just moving this
17 changes to the LAO report?

18 CHAIRPERSON BROWN: It's an amendment. So we're
19 moving an amendment to the resolution.

20 COMMITTEE MEMBER MULÉ: That's what I was going
21 to do, amend the resolution. Move the resolution as
22 amended.

23 CHAIRPERSON BROWN: No. It's an amendment to the
24 report.

25 COMMITTEE MEMBER MULÉ: It's an amendment to the

1 report on the resolution.

2 Elliot, do you want to take a stab at this so we
3 can get the proper language on the record?

4 STAFF COUNSEL BLOCK: I think you're there. I
5 think you're looking for a motion on proposed amendments
6 to the report that have been discussed.

7 COMMITTEE MEMBER MULÉ: That's it. Okay. That's
8 what we will move.

9 STAFF COUNSEL BLOCK: Depending on the outcome of
10 that vote, the Chair was looking at perhaps providing some
11 direction on when staff would bring back for an official
12 vote on the whole report next week. Did I capture that?

13 CHAIRPERSON BROWN: Do we need to submit these
14 changes for the record as suggested in writing by Member
15 Peace?

16 COMMITTEE MEMBER PEACE: Can I make a motion to
17 amend the report with the changes that I mentioned today?
18 Would that work?

19 STAFF COUNSEL BLOCK: Sorry. I apologize.

20 EXECUTIVE DIRECTOR LEARY: Madam Chair, if I
21 might suggest --

22 CHAIRPERSON BROWN: What I'm looking for is one
23 motion on these changes only, a vote. And then after that
24 vote is made, then we can take the report up in its
25 entirety with or without these changes.

1 COMMITTEE MEMBER MULÉ: We have a motion. Do we
2 have a second?

3 COMMITTEE MEMBER PETERSEN: Second.

4 COMMITTEE MEMBER PEACE: I would make a motion to
5 amend the report with the changes that we've made today.

6 COMMITTEE MEMBER MULÉ: Board Member Peace,
7 there's already a motion on the floor. And I believe
8 Board Member Petersen just seconded it.

9 CHAIRPERSON BROWN: It's been moved by Member
10 Mulé and seconded by Member Petersen to amend the report
11 with the suggested changes on the document distributed by
12 Member Peace at our meeting today.

13 Kristen, can you call the roll?

14 EXECUTIVE ASSISTANT GARNER: Chesbro?

15 COMMITTEE MEMBER CHESBRO: No.

16 EXECUTIVE ASSISTANT GARNER: Mulé?

17 BOARD MEMBER MULÉ: Aye.

18 EXECUTIVE ASSISTANT GARNER: Peace?

19 COMMITTEE MEMBER PEACE: Aye.

20 EXECUTIVE ASSISTANT GARNER: Petersen?

21 BOARD MEMBER PETERSEN: Aye.

22 EXECUTIVE ASSISTANT GARNER: Brown?

23 CHAIRPERSON BROWN: Aye.

24 We have four votes to amend, one decline. And
25 the motion passes.

1 So I'd like to direct staff to include these
2 changes as voted by a majority of the Board into revisions
3 to be distributed, including in the report, re-distribute
4 for consideration next Tuesday. There we go. Sorry.
5 Sorry to go through all that.

6 Okay. We're going to go back now to Agenda Item
7 B, which is a public hearing and request for rulemaking
8 direction and an additional 15-day comment period. This
9 item is intended to be the public hearing to receive
10 comments on the proposed regulations for the at-store
11 recycling program, the plastic carry-out bag law.

12 Anyone wishing to provide comments should fill
13 out a speaker slip and hand it to the Committee's
14 Executive Assistant, Kristen. At the end of the comments,
15 the 45-day comment period will be closed and the Committee
16 will discuss the next steps regarding these proposed
17 regulations.

18 So this is our public hearing. And you're up,
19 Ted.

20 PROGRAM DIRECTOR RAUH: Thank you, Madam Chair.

21 I'm Ted Rauh, Program Director for Waste
22 Compliance and Mitigation Program. At this point we are
23 here, but it's really an opportunity for the public to
24 make any comments to the Board on these regulations.

25 CHAIRPERSON BROWN: Neal, you're up.

1 STAFF COUNSEL HUNT: This is Heather from Legal.

2 Have we concluded our public hearing at this time?

3 CHAIRPERSON BROWN: Is there anybody wishing to
4 speak prior to us concluding the public meeting -- public
5 hearing? Nope.

6 Public hearing is closed. 45-day comment period
7 is closed. And now we'll move on to consideration of item
8 B.

9 PROGRAM DIRECTOR RAUH: Thank you very much.

10 To present the staff recommendation on the 15-day
11 additional comment period I have with me today Neal
12 Johnson and also Heather Hunt from the Legal Office.

13 MR. JOHNSON: Good morning, Madam Chair and
14 members of the Committee.

15 We are here today to discuss Item B in your
16 agenda, which is the public hearing which has now
17 concluded, and the request for rulemaking direction to
18 provide an additional 15-day comment period for the
19 revision of regulations on statewide recordkeeping and
20 reporting requirements for the at-store recycling plastic
21 carry-out bag program.

22 A little background, in June of last year, the
23 Board approved emergency regulations to get the program
24 going. Those were adopted by OAL in late July with minor
25 clerical revisions.

1 In January, we received a 90-day extension in
2 late April and those emergency regulations expire on July
3 29th of this year. Meanwhile, we have moved starting in
4 September with the Board approval to notice the
5 regulations.

6 In March, we filed with OAL a regulation package
7 and notice. We actually wound up doing two mailings, one
8 in March on March 14th and another one on March 28th
9 because OAL inadvertently did not publish in the register
10 the notice of regulations. We had to do another notice.
11 We sent to nearly 900 parties a notice about the
12 regulations. And also in that same one a notice to store
13 operators on their reporting requirements under the
14 emergency regulations. The 45-day comment period ended
15 with public hearing today.

16 We have received written comments from two
17 parties, one of which you should have received a copy of
18 last night or this morning. One of the parties commented
19 by e-mail. Actually between the two notices we sent out
20 the informative digest not include the cost savings due to
21 reduction in the use of plastic carry-out bags. And then
22 the other was there was no definition of reusable bags in
23 the regulations.

24 The comments you received today or last night
25 include that biodegradable bags should be included in the

1 definition of plastic carry-out bags.

2 That the Board should require rather than an
3 annual report by operators a semi-annual report.

4 That the store or store operator should directly
5 weigh the bags and report a direct weight of bags as
6 opposed to the mechanisms established both in the
7 emergency regulations and proposed in the permanent
8 regulations that operators would have an option of either
9 directly weighing the bags or weighing all film plastic
10 including the bags and reporting that and through the
11 commingled recycling rate an estimate of the number of
12 bags would be determined.

13 This commenter said that if the total weight of
14 film plastic is used, the operator should be required to
15 do quarterly field sampling. And then also suggested
16 maybe as an alternative that the Board should adopt a
17 manifest system to track the bags from the time they are
18 distributed by the bag manufacturer to the distributor
19 through the store on to the recycler.

20 And then also that the commingled recycling rate
21 which the regulations develop has essentially too much
22 variation that can occur from store to store, year to year
23 geographic area.

24 And that if the Board allows as the regulations
25 do operators to develop their own methodology, that the

1 Board needs to establish a very formal process for
2 adoption of that methodology.

3 And that the Board must periodically update.
4 Didn't say exactly how often its estimate of the
5 commingled recycling rate.

6 CHAIRPERSON BROWN: Are these comments for the
7 45-day comment period, or are they going to be included in
8 consideration for the upcoming 15-day comment period?

9 MR. JOHNSON: They will be considered in that
10 we -- as I say, we got a lot of these comments late
11 yesterday so --

12 CHAIRPERSON BROWN: What I was going to suggest
13 is rather than give a long list of all the comments you
14 gave, let's do an analysis of them and a response that you
15 can forward to the Board. Because just listing them isn't
16 helping us. Because I'm not writing them down. I assume
17 we're going to get them later on.

18 So rather than spend your time going through
19 them, I think it would be helpful if you have an
20 opportunity to thoroughly analyze them, go through those
21 suggestions, and give us a thoughtful response to that.
22 You know, some of them are valid. A few of them off the
23 cuff sound like things we considered quite heavily and
24 grappled over during the emergency reg process. And so
25 we've spoken very clearly about some of those issues on

1 the record.

2 I think it's fair to reconsider them or at least
3 have them re-brought up. But I don't know that we need to
4 do it in today's forum. So --

5 MR. JOHNSON: Which actually leads sort of to why
6 we have actually proposed the 15-day comment period which
7 actually came up before yesterday's comments. And these
8 are not comments directly -- written comments are not
9 comments made directly by anyone. But have been issues
10 that have arisen from questions from the operators on how
11 to do the reporting.

12 And there is some inconsistencies in the exact
13 language between what they are required to maintain
14 records on and how they are required to report. And a lot
15 of that deals with how inventory is handled, particularly
16 on the bags, because you may have somebody that buys a
17 large lot and then ships them to their stores over time.
18 But the amount purchased during the year is not
19 necessarily equal to the amount delivered. So we want to
20 clear that up.

21 And that has impact on the accuracy of any
22 calculated recycling rates and any diversion calculated.
23 So what we would like to do and we are requesting this
24 Committee to approve is to do another 15-day comment
25 period on revised regulations to make the language

1 consistent and clarify it.

2 CHAIRPERSON BROWN: That would start today;
3 right? Is that what you're asking for, an additional
4 15-day comment period on top of today?

5 ACTING DEPUTY DIRECTOR VAN KEKERIX: We would not
6 be able to begin the 15-day comment period.

7 CHAIRPERSON BROWN: OAL approves it.

8 ACTING DEPUTY DIRECTOR VAN KEKERIX: We prepare
9 the response to comments and the revised regulations and
10 put the whole package together and get it ready to send
11 out for 15 days. So it's as soon as we can get the work
12 accomplished to respond to the comments and put the
13 package together that we start 15 days.

14 CHAIRPERSON BROWN: Clearly, we need to clear up
15 the difficulties with regulating this program for the
16 reporting. We want the most accurate reporting. So I
17 think that we probably want to direct staff to make the
18 proposed changes to the regs, prepare the packet, and seek
19 an additional 15 day comment period. Is that okay with
20 everybody?

21 MS. JOHNSON: Thank you very much.

22 CHAIRPERSON BROWN: Okay. Our next item is
23 Committee Item D, Board Item 8, Presentation of Used Oil
24 Policy Recommendation from the Contractor Lawrence
25 Livermore Laboratory. Howard.

1 PROGRAM DIRECTOR LEVENSON: Given the time
2 constraints we're operating under today, Madam Chair, we
3 could have a slightly shorter presentation or medium
4 length.

5 CHAIRPERSON BROWN: That would be great. Since
6 we have had an initial discussion of this item previously,
7 I think a shortened presentation would be fine. And that
8 will give stakeholders an opportunity -- more
9 opportunities.

10 PROGRAM DIRECTOR LEVENSON: This is Item 8, the
11 Lawrence Livermore National Lab report on used oil
12 recycling in California.

13 As you know, LL&L first provided an overview of
14 this study verbally in February to the Board. Based on
15 stakeholder comments at the meeting, the Committee and
16 Board directed staff to conduct a workshop with
17 stakeholders and LL&L, which we did in April.

18 I think LL&L has taken the comments from the
19 workshop and other communications and addressed them in
20 the report before you today. And in staff's view, we
21 believe LL&L has done a very good job of listening to
22 stakeholder comments and concerns within the last couple
23 of months and responding to them. I think the report's
24 conclusions that you'll hear today reflect this dialogue.

25 That, of course, doesn't necessarily mean that

1 any particular stakeholder is going to agree with the
2 report's conclusion or recommendations. But I do want to
3 acknowledge that in our view the contractor has been
4 responsive to the various concerns expressed by the
5 stakeholders. And I want to acknowledge Adam Love and
6 Mackenzie Johnson from the lab for their efforts. So I'm
7 going to turn it over to Bert for a real short intro and
8 to Adam.

9 MR. WENZEL: Good morning, Madam Chair, members
10 of the Committee. My name is Bert Wenzel with the
11 Sustainability Program, and I'm the contract manager.

12 Just briefly, I just would like to also take a
13 moment to thank Adam and Mackenzie for their hard work and
14 perseverance on this project. I know they put in an
15 enormous amount of time and effort to produce this report
16 before us today.

17 With that said, I'm going to turn it over to them
18 for the presentation.

19 (Thereupon an overhead presentation was
20 presented as follows.)

21 MR. LOVE: Thank you very much. We really
22 appreciate the opportunity to come back and especially
23 after our meeting with our preliminary recommendation to
24 come back and discussion our final recommendations.

25 We've learned a lot between now and then. Just

1 when you think you know everything, there's always room to
2 learn a lot more. You know, probably our initial
3 preliminary recommendations, we weren't really working in
4 the realm of feasibility as much as we should have been.
5 So our final recommendations really do represent something
6 that we really feel like provides a set of feasible
7 recommendations and provides a lot less sort of general
8 difficulty in resistance to actually achieving the goals
9 set forth.

10 One thing that should be noted in all of this is
11 used oil is actually a very valuable resource. And
12 there's a lot of people out there that are recycling used
13 oil and making valuable products out of them. And as a
14 result, there's a lot of competition. So in the process,
15 we have spent quite a bit of time piecing together the
16 information from folks who are competing for this product.
17 And as you might imagine when you're competing for the
18 product, you're providing -- we were getting a lot of
19 information that represented a very narrow view of the
20 used oil system. So we really viewed a lot of our efforts
21 being involved with piecing those bits of information
22 together in order to provide an overall view of the
23 overall system at hand.

24 --o0o--

25 MR. LOVE: So our original tasking was to

1 actually look at using existing refineries. This was
2 related to the fact that the evaluation at California was
3 capacity limited in its ability to re-refine used oil back
4 to basically oil product. When we were asked to look at
5 the technical requirements, non-technical requirements,
6 and provide some recommendations about how to best move
7 forward with trying to utilize existing crude oil
8 refineries for used oil recycling.

9 We went down that path for a while. And through
10 interviews with stakeholders and talking to various crude
11 oil refineries, we got some initial results that we didn't
12 want -- sort of indicated we didn't want to go down that
13 path very far in terms of that capacity wasn't necessarily
14 the only limiting factor for the production of re-refined
15 used oil, that for the crude oil refineries, the
16 California hazardous waste designation, and the idea of
17 them handling a product that would be perceived of as a
18 waste was definitely a barrier for their willingness to
19 include used oil in their re-refining process. And that
20 mixing used oil with crude oil resulted in more
21 complications in terms of their process then was really
22 worth, you know, the upside benefits of them including it
23 in their system.

24 So we rapidly concluded that re-refining really
25 was not limited by technical feasibility through existing

1 refineries. And that in reality that was the dynamics of
2 the actual market system itself that was limiting it. And
3 so as a result --

4 --o0o--

5 MR. LOVE: -- we modified our task to optimize
6 what at the time we called highest and best use, which
7 subsequently has been sort of an unfortunate phrase which
8 is caused more controversy than benefit. But we'll get to
9 that.

10 The modified task was to perform a systems
11 analysis of used oil market and evaluate potential changes
12 that would promote recycled oil products that were deemed
13 highest and best use and which include describing the
14 current used oil system, understanding the system forces,
15 and providing a set of recommendations that would promote
16 these highest and best use products.

17 Now, highest and best use is, you know,
18 unfortunately a difficult term, because everybody wants
19 their product to be highest and best. And so, you know,
20 our product's highest and best, everybody else's product
21 is not. And so, you know, depending on how you look at
22 these products, these are all valuable products. They all
23 provide an important place in the market. And so the idea
24 of evaluating something that's highest and best is
25 controversial.

1 The criteria that we have used were based on the
2 amount of contaminants released during its reuse, the
3 energy conservation required in the recycling process, and
4 the resource sustainability of that product. Using those
5 three criteria, recycling to lube oil we evaluated as
6 highest and best use.

7 We did acknowledge there is significant
8 environmental benefits from some of the other recycled
9 products where, you know, much lower contaminants are
10 released than, you know, other recycled products. And
11 there is some degree of energy conservation. But when
12 putting all three of the criteria together, both ourselves
13 and when we have this discussion with the staff from the
14 Board, we all agreed that recycling to lube oil was
15 evaluated as highest and best use.

16 --o0o--

17 MR. LOVE: So this is a picture of the general
18 lube oil system. There are numerous stakeholders in the
19 system from the folks that are generating the used oil to
20 the collectors and haulers and recyclers. Currently,
21 there is a four cent fee collected at the sales, which is
22 then paid back at you folks that do the collecting.

23 These numbers could be -- talk a lot about
24 numbers as well. These numbers represent the numbers that
25 come from California Integrated Waste Management Board

1 documentation. We know there is a different set of
2 numbers through DTSC. We have included some of that in
3 the text of the report. We're going to include more of
4 those descriptions of the differences of some of the
5 numbers in our revision of the draft of the report.

6 --o0o--

7 MR. LOVE: When we look at the actual products
8 that are being produced, there is essentially three
9 categories of products that we're going to discuss here.
10 There is recycled fuel oil, marine distillate oil, and
11 re-refined base lube. And each of those products have
12 increasing array of treatment.

13 When we look at these products in comparison to
14 one another, re-refining according to DOE provides the
15 best solution for both energy resource, preservation, and
16 environmental conservation.

17 API states that compared with production of
18 virgin -- crude from virgin -- production of lubricant
19 from virgin crude, re-refining is 50 to 80 percent less
20 energy intensive. And according to ENSR produces 20
21 percent of the greenhouse gases compared to the production
22 through virgin crude.

23 The Boughton Horvath paper when they did
24 end-of-life impacts on air quality from re-refining and
25 production of MDO evaluated those two products as being

1 approximately equivalent and both better than RFO in terms
2 of the environmental impacts.

3 But one last thing is the Fehrenbach paper
4 pointed out that, you know, RFO which, you know, tends to
5 sort of end up at the bottom of the heap of these products
6 actually displaces a product that would be even more
7 contaminating in terms of if folks that are currently
8 using RFO would go to coal, you then might have an even
9 greater contamination problem. So each of these products,
10 everybody wants there to be a product that's an evil
11 product.

12 And the reality of these is these are all
13 products and they essentially, if you got rid of them, the
14 product that would fill it in is likely to be worse. And
15 so, you know, these are all products that have appropriate
16 markets that have ample market share, lots of demand, and
17 thus lots of competition.

18 When we look at the characteristics of these
19 products, we see that, you know, recycled fuel oil is a
20 single use recycling. The product from re-recycling to
21 recycled fuel oil is of lesser quality than the original
22 lube oil and therefore is considered a down cycled product
23 and results in heavy metals and sulfur emissions.

24 Marine distillate is also single use of recycling
25 and is a down cycled product. But because of the

1 additional processing step has a lower environmental
2 impact when it's burned.

3 And industrial lube oil is essentially closed
4 loop recycled, although nothing is 100 percent recycled.
5 You don't put a quart in and get a quart out. So when
6 we're talking about closed loop, we're talking about a
7 process where recycling returns a product that's of equal
8 value and quality as the original product.

9 --o0o--

10 MR. LOVE: And then of course the automotive
11 re-refined base lube that is closed loop maintains the
12 original quality and has a low environmental impact. So
13 each of these products is really valuable. But like I
14 said, what we have decided to focus on in terms of highest
15 and best use is the production of re-refined base lube.

16 --o0o--

17 MR. LOVE: Now we were hoping the system had a
18 single bottleneck and therefore we can provide a single
19 recommendation. And that would solve the world's problems
20 there and would be no more used oil sitting anywhere
21 waiting to be picked up.

22 The reality of it is the market dynamics are very
23 complicated. That on the demands side there needs to be
24 increased demand. There needs to be an increased supply
25 of used oil. And there needs to be an increased capacity.

1 So we focused on those three areas and really sort of left
2 no stone unturned in terms of looking at possible
3 solutions, some of which we talked about at the last
4 meeting but that we've since revised.

5 --o0o--

6 MR. LOVE: So there's externalities to the
7 California system that need to be included because the
8 market doesn't determine everything. Demand from
9 out-of-state recyclers definitely impacts the market.

10 National/international lube oil supply is, you
11 know, constant if not still growing. And so, you know,
12 there seems and appears to be a continued market for
13 increased lube oil production.

14 Air quality regulations make the processing to
15 refuel oil and makes construction and expansion of
16 refineries facilities exceedingly difficult.

17 And the permitting itself in California obviously
18 limits the expansion and construction.

19 API standards influence how much processing in
20 the future has to be done to these oils.

21 And lastly, Cal/EPA hazardous waste
22 characterization increases the costs and limits the
23 handling. I know that is a controversial statement
24 because a lot of people don't agree with that. And
25 probably more than just the hazardous waste

1 characterization. Probably couples in with that the
2 permitting difficulties and air quality restrictions. But
3 certainly doing business in California in the way that
4 contaminants and hazardous waste is handled definitely
5 does increase the cost and limits the handling.

6 In state providers stakeholders voiced very
7 strongly the idea that this accountability through the
8 hazardous waste characterization has absolutely improved
9 the way that used oil is handled. Out-of-state folks say
10 we handle oil all over the country without needing this
11 requirement.

12 But one thing everybody agreed upon was the fact
13 that hazardous waste characterization is off limits. It's
14 dead in the water trying to provide any changes to that.
15 So as much as we think we can be more creative if that
16 doesn't exist, it does exist. So we're working in that
17 box.

18 --oOo--

19 MR. LOVE: So stakeholder feedback has to do with
20 highest and best use and people not liking our
21 categorization of highest and best use. We got strong
22 feedback because we had initially proposed about maybe
23 modifying the incentive for certified collection centers.
24 So we've maintained that. Obviously lots of regulatory
25 issues, which I just mentioned and the market, which we

1 discussed is just being competitive market.

2 And ultimately, you know, we don't believe that
3 California the should be limiting itself to using only
4 facilities within California, because there are facilities
5 outside of California that can help California meet its
6 goals. So we really do have a preference for a fair open
7 market over a system where the market would be closed,
8 because we really do feel like out-of-state facilities
9 that are willing to work under California guideline for
10 how they test and handle used oil can be part of the
11 solution in order to achieve these goals of increasing the
12 production of highest and best use products.

13 --o0o--

14 MR. LOVE: So this is our recommendations. What
15 we decided to do is take the system and decided to really
16 attack it at all levels.

17 On the demand side -- well, the first thing is we
18 have to enable the recommendation to be successful. So
19 the first thing is re-evaluating the fees on lube oil
20 sales.

21 Market-based sort of incentives are going to
22 require money. Otherwise, the market doesn't really
23 respond to that very well. And so the fees on sales are
24 going to have to be evaluated in order to actually
25 implement any of the recommendations.

1 One thing that we have suggested is actually
2 reducing the fee for lube oil sales for products that have
3 recycled content so that you provide some increased demand
4 for products that actually include recycled content.

5 Another recommendation has to do with providing
6 some education to the general public about oil with
7 recycled content. Virtually nobody knows that's even an
8 option. So there are folks who would make that choice.
9 You know, there are more and more people making choices
10 based on their carbon footprint and things like that.

11 The idea of giving them information so they can
12 make the choice to chose the product with recycled
13 content, even if it's a relatively small part of the
14 marketplace, is part of the marketplace to increase
15 demand.

16 The last thing is -- the fourth recommendation
17 has to do with encouraging and supporting curbside used
18 oil collection. Now, every stakeholder involved in this
19 process agrees with improved collection, because that
20 makes the pie bigger. Even if you don't get some of that,
21 nobody is taking any away from you. So the idea of trying
22 to get more oil into the pipeline, everybody agrees with.

23 And our looking at where is the easiest place for
24 that oil to come from, it's from the do-it-yourselfers who
25 just can't be motivated for a reasonable fee to get from

1 their driveway to a certified collection center. So let's
2 lower the energy barrier for them and get their oil
3 through curbside collection.

4 And then the last thing is to provide a monetary
5 incentive for the production of API certified base lube
6 oil. And we talk about this as applying to both in-state
7 facilities and out-of-state facilities who are willing to
8 comply with California's rules for testing and handling.
9 And the oil that would be off spec in California isn't
10 going out of state and being re-refined. But if it's in
11 spec in California and it goes out of state and it's in
12 spec, then there's no reason why they shouldn't be
13 receiving part of the incentive since they're actually
14 part of the solution to us achieving the highest and best
15 use.

16 Now if the oil is off spec in California and it
17 goes out of state and it's off spec, they would be
18 required to handle it as if it was off spec in California
19 and not based on their own state rules if they want to be
20 included in the incentive program.

21 But we very much feel like part of the solution
22 is including our surrounding states. In addition to that,
23 we provide an additional recommendation that was outside
24 the optimization of lube oil production because there are
25 other recycled products that have a low environmental

1 impact that, you know, if not being re-refined, it would
2 be nice if those products were incentivized to a lesser
3 degree. That's through the production of industrial lube
4 oils as well as MDO.

5 --o0o--

6 MR. LOVE: And of course we want to acknowledge
7 this has been an enormous amount of input from an enormous
8 amount of parties and we want to make sure we recognize in
9 terms of putting this together. Thank you.

10 CHAIRPERSON BROWN: Thank you, Adam. Mackenzie,
11 thank you very much for all the hard work you put into
12 this and everything we put you through coming here twice
13 to make the presentation.

14 I know we have a couple of speakers. Before we
15 ask our speakers, do any Board members have questions
16 regarding the report from LL&L?

17 Okay. Let's ask our speakers then. First is Bob
18 Hoffman from DeMenno Kerdoon.

19 MR. HOFFMAN: Good morning. I'd first like to --
20 Bob Hoffman representing DeMenno Kerdoon. And I would
21 like to acknowledge Dr. Love and his staff and your staff
22 for being responsive.

23 We did get a lot of work done since the last
24 workshop, and the report is markedly better than it was
25 otherwise going to turn out to be. But there are still

1 some important and significant problems with the report
2 and the recommendations. And I'll try to keep this
3 relatively simple, because I submitted a multi-page letter
4 and I don't want to cover all of it. But I'll cover quite
5 a few of the points here.

6 First, I'd like to just talk about the way the
7 agenda item was crafted, because I think it tees it up a
8 little bit unclearly. The agenda item notes that recycled
9 fuel oil, or RFO, which is basically your black oil that's
10 been de-watered and had the sediments taken out of it is a
11 customary practice in California. That is an historic
12 practice. That is definitely not the way the market works
13 now.

14 What we would estimate that about 80 percent of
15 the fuel oil that's produced in California is cleaned
16 marine diesel. It's not the black FOC or recycled fuel
17 oil that was historically produced.

18 There is a segment of the used oil that is not
19 processed, and that's being shipped out of state. And for
20 our purposes, we think that's your target. If you want to
21 clean up the products coming out of the used oil process,
22 you want to go after that black oil.

23 The report also talks about the fact that
24 re-refining is highest and best use. And Dr. Love spoke
25 to that a little bit. And it's really not a question of

1 whether you call it highest and best use. It's what are
2 you going to do with that classification. Are you going
3 to try to effect the market because you decided that
4 re-refining is highest and best use. That's where the
5 problem comes in.

6 The reason that there is there isn't a lot of
7 lube oil being produced from used oil is because there's
8 not a market demand for it. So when Dr. Love talks about
9 this market being very complicated, it's not a complicated
10 market. It's a very simple market. What's complicated is
11 if you try to create a market for re-refined lube oil when
12 there isn't one.

13 COMMITTEE MEMBER CHESBRO: If that was a
14 criteria, we never would have increased diversion in
15 California for any material if we said there's not a
16 market for it so let's not do it.

17 MR. HOFFMAN: I agree with you. I think, Mr.
18 Chesbro, you can distinguish the progress that the Board
19 has made by critiquing that. But the fact is that MDO is
20 a very good environmentally protective product. So you
21 get to --

22 COMMITTEE MEMBER CHESBRO: I just don't buy that
23 if there is no current market that we don't have a
24 responsibility to try to figure out how to make one.

25 MR. HOFFMAN: Okay. I got that. But you want to

1 critically analyze whether or not that you want to create
2 that market. That's my point.

3 This report does not critically analyze that
4 aspect. It just assumes that lube oil production is
5 highest and best use and then creates recommendations
6 based on that assumption. Dr. Love threw out some
7 statistics about the energy costs of producing re-refined
8 lube and also the greenhouse gas impact. Those statistics
9 are terribly skewed because they're based on bringing
10 crude over from foreign countries. They're not based on
11 examining the respective environmental benefits from
12 taking our used oil and creating lube or creating MDO out
13 of it. That's the kind of analysis you need to do if you
14 want to get an accurate view of the carbon footprint and
15 the respect of environmental benefits from choosing
16 between these products.

17 There's also a statement in the staff's analysis
18 that says that used oil's designation as hazardous waste
19 results in more liability and more cost. I'd just like to
20 point out that historically we've established that if
21 there's far less liability for the California's generators
22 by handling it as hazardous waste than what was happening
23 before that designation was put into place.

24 So we do support many aspects of the report. We
25 think that the real opportunity to increase the amount of

1 waste oil getting into the recycling system is to get it
2 from households. And so anything that can be done to tap
3 that part of the market -- because believe me, due to the
4 competition that's been referenced already, the industrial
5 and commercial market is effectively beginning capture.

6 We do support their recommendation that we keep
7 the designation as hazardous waste and that we keep the
8 current 16 cent per gallon incentive going to the
9 certified collection centers.

10 We also appreciate their acknowledgement that MDO
11 is equivalent to re-refined lube oil from an environmental
12 contaminant perspective and that both lube oil and MDO are
13 high value preferred products.

14 I won't go into any more of the discussion about
15 highest and best use other than to emphasize we think that
16 needs a closer look. And we would also note that the
17 report doesn't get into an analysis of the market for MDO
18 and how that product is serving the clean air mandates for
19 the shipping industry in the state and what the impact
20 would be of redirecting that to lube oil.

21 The other problems with the report are that it
22 recommends that California's standards being applied to
23 out-of-state facilities, which we agree with. But it then
24 concludes that there shouldn't be any testing requirements
25 on waste oil that's leaving the state.

1 And we think that that's wrong for a number of
2 reasons. I mean, obviously there is a definition of used
3 oil. There is an infrastructure for transporting used
4 oil. And if the material doesn't meet the definition of
5 used oil, it needs to be more safely handled. In other
6 words, if it's not tested and ensured it meets a basic
7 purity standard before it leaves California, we're
8 basically exporting pollution to other states. Once the
9 waste oil leaves the state, we don't have any jurisdiction
10 over it. And then it can be burnt or otherwise handled in
11 an environmentally unsatisfactory fashion.

12 So we think that any waste oil leaving the state
13 needs to be tested either by the generator, hauler, or a
14 transfer facility. Doesn't necessarily have to be by the
15 hauler.

16 The second issue with the report is that it
17 recommends a re-refining incentive be available for
18 out-of-state facilities. That's fine. We wouldn't want
19 to get into a commerce clause problem with not providing
20 incentive out of state. But the report doesn't talk at
21 all about how that would be handled administratively, how
22 it would be verified. And we think that what would happen
23 if you simply implemented a strategy like that is that
24 California oil going out of state would just replace the
25 waste oil that's already being re-refined out of state.

1 So in other words, it would result in a scam.

2 So if there was going to be a system that
3 incentivized new capacity, then we would need to be
4 structured on verifying that there was new capacity being
5 put into production rather than simply allowing people to
6 substitute existing feedstocks and then garnering the
7 benefit from increased incentive.

8 The draft report continues to recommend
9 segregating automotive and industrial oil and there's
10 absolutely no need to do that. It's not necessary to
11 segregate those waste streams to produce re-refined lube
12 oil. As a consequence, you would simply require more
13 trucks to be out picking up discreet loads. You require
14 more tankage to keep the oil separated and there's no need
15 to do that.

16 We've also suggested that there be a
17 certification system for the existing oil that's being
18 collected that you would only get the 16 cents if it ended
19 up being recycled. And currently while there has to be a
20 certification that it's sent to a facility that's
21 authorized to recycle, there's no requirement that it
22 actually be recycled and consequently some of it is not.
23 We think that's an easy improvement to implement.

24 The report focuses on the fact that EPA is likely
25 to be increasing the requirements on MDO for purposes of

1 emissions. And as a consequence, they speculate that
2 that's going to result in the production and more
3 re-refined lube. But that's not what's going to happen.
4 The quality of MDO will be improved as it should be by the
5 environmental system. And so MDO will still be produced
6 to satisfy fuel needs, it just will be cleaner MDO.

7 Lastly, the report lumps all fuel oil together as
8 I indicated at the beginning. And I think it's important
9 to know that roughly 80 percent of the waste oil that's
10 being converted into fuel oil at this point, 80 percent is
11 being turned into clean marine diesel. So rather than,
12 you know, categorized fuel oil as a lower use, there has
13 to be a differentiation of what you want to target to
14 clean up because that will allow you to come up with
15 solutions that will actually make a difference.

16 So for suggestions for improvements, to wrap up,
17 we would ask for the highest and best use to be
18 re-evaluated.

19 CHAIRPERSON BROWN: Bob, this is all directly
20 from your letter; correct?

21 MR. HOFFMAN: I'm finished.

22 CHAIRPERSON BROWN: I think we can take all --
23 these are summaries of things from what you've mentioned
24 in the seven suggestions that are suggestions and drafts.

25 This is the final report. The Board is receiving

1 the final report. We are not in a draft anymore. The
2 draft was presented already. So what's before the Board
3 today is Lawrence Livermore's final report. So we are not
4 going to be making any changes to this report.

5 MR. HOFFMAN: It is currently still in draft
6 status.

7 CHAIRPERSON BROWN: We're not directing you to
8 make additional changes to this document. So we did that
9 at the last meeting. And I think you participated. And
10 so we're not asking them to make additional changes to the
11 report, but the Board will receive it. It's not a
12 document that we have to adopt as policy or that the Board
13 embraces in its entirety. This is just a report by a
14 contractor on possibilities for the Board to consider as
15 we look at improvements to the program to the future.

16 MR. HOFFMAN: Well, we look forward to working
17 with you and staff to craft them a little more carefully.

18 CHAIRPERSON BROWN: Thank you.

19 Just to clarify, because I don't know if
20 everybody knows. You know, when we get a contractor's
21 report, it doesn't mean that the Board adopts it or takes
22 it in its entirety as a policy document the Board
23 embraces. This is a report from the contractor. Staff
24 will take into consideration any recommendations in this
25 as they look at how we might be able to improve the used

1 oil program or any program that is done. And that goes
2 for any report where we contract with a contractor to
3 bring us information from the field.

4 But Bob, thank you very much for your very
5 thorough analysis. I really appreciate the letter and
6 your suggestions. And we do have two other speakers that
7 I will ask to come forward and speak to certain items that
8 are relevant to the document, not policy decisions that
9 the Board may make in the future. This is relative to
10 this document.

11 So the next one is Robert Sulnick from Evergreen.

12 MR. SULNICK: Madam Chair, members of the Board,
13 staff, Adam and Mackenzie, thank you for having us.

14 There are a variety of things in this report that
15 we agree with. I just want to list them. We think it's
16 obvious that re-refined oil is the highest and best use in
17 a political world where oil is running out and is a
18 strategic natural resource. Any time you can recycle that
19 and reuse it from the used oil to a base lube product,
20 that by definition is the highest and best use. Not to
21 mention there is a one-third energy savings in producing
22 base lube that can be used in automobiles as opposed to
23 using crude oil to create the same kind of product. So
24 we're real clear that the highest and best use of the
25 resource used oil has to be in our modern world the

1 re-refining of it.

2 Regarding incentives, we agree with the report
3 that there ought to be a tiered approach to incentives
4 with the higher incentive going to re-refining as the
5 highest and best use and a lesser incentive going to MDO
6 because of its CARB-approved sulfur standards.

7 There is an implication in the report that it
8 would be beneficial to have an incentive go directly to
9 the re-refiner if there is enough money in the Board's
10 budget. And if the Board would choose to do that, we
11 would obviously support that recommendation.

12 It's very important to us the acknowledgement of
13 the API standard be incorporated by this Board and this
14 document. It's a scientific standard. It's a neutral
15 standard. And it acknowledges what a re-refined base lube
16 is. So any implication for facilities or out-of-state
17 facilities that have to meet California standard in our
18 view have to include that standard meeting the API
19 definition of what re-refining is. Otherwise, re-refining
20 is simply a term of art and becomes political. We would
21 100 percent support the report's recommendation that the
22 API standard be used.

23 In addition to that, we would agree that
24 out-of-state facilities that can meet California standards
25 should be entitled to participate in the incentive. But

1 that needs to be qualified. It needs to include the API
2 standard. It needs to include handling the used oil as a
3 hazardous waste. If you're going to be on parody with
4 California, you have to deal with is as a hazardous waste.
5 Otherwise, you're not doing parody.

6 And it also would include the closure trust fund
7 requirement. In California, facilities have to put up the
8 bond between a million and three million dollars for
9 closure. So if a facility closes, generators are not on
10 the liability hook. So we think those criteria have to be
11 involved in what California standards are.

12 In addition to that, we think that there is a
13 market for re-refined oil. We think that the need for
14 education and curbside collection are obvious and that
15 there is no doubt that a consumer demand for this could
16 easily be generated by better advertising. And we think
17 the idea of more curbside collection is absolutely
18 essential.

19 The idea of reducing the oil feed if the Board
20 can afford it for a product that contains re-refined
21 product, we think that's a really good idea. Because that
22 would obviously help stimulate the market along with
23 advising and more curbside collection. I think those are
24 fabulous ideas.

25 Now there are a few things where we disagree and

1 we would like to just distinguish. We think it's
2 premature to consider incentivizing the product. We think
3 the market should do that. There is an implication in the
4 report we should incentivize the product. We don't think
5 society is ready for that. There is not enough capacity
6 built into the system yet. Let the market evolve there.

7 We think it is really critical that the report's
8 reference to testing oil that goes out of state be
9 characterized. In state, independent haulers have to pay
10 to test their oil to California standards. In state,
11 recycling facilities have to pay to test their oil to
12 California standards. It makes absolutely no sense to us
13 to allow out-of-state independent haulers not to test that
14 oil both from a level playing field analysis and also from
15 the point of view of enforcement. Once that oil leaves
16 the state, there is absolutely no way to enforce that it
17 in fact has been tested to California standards.

18 And you would also have to ensure that the
19 facilities that it's going to have the lab capacity the
20 test to California standards. So we think that the
21 analysis on out-of-state testing is a bit deficient in
22 that it really needs to acknowledge that in-state
23 independent haulers have to test as do recyclers. So that
24 for a level playing field for California businesses, there
25 really needs to be parody about the need to have oil

1 that's going out of state tested in state.

2 And then there's also the enforcement provision.

3 If we don't do that, California will be in the unfortunate
4 position of exporting pollution by definition. So we
5 think that's really critical.

6 There is a couple of other references that I
7 think just need to be clarified. And then I promise I
8 will leave.

9 The implication in the report that there was a
10 letter submitted by DK that MDO and re-refined are
11 equivalent, and there was an acknowledgement in the report
12 that in terms of air emissions they are neutral. They are
13 equivalent. We don't think that's true. The heavy metal
14 content of re-refined oil is zero or diminimous, 99.5
15 percent. The heavy metal content of MDO is 30 to 40 PPM
16 heavy metals.

17 The sulfur content in re-refined oil, as the
18 report points out, is under 100 parts per million. And we
19 believe the sulfur content in the MDO is as high as 350
20 parts per million. By definition, they can't be
21 equivalent at an emission levels or any other level. It
22 is simply scientifically inaccurate to suggest that. That
23 should be corrected.

24 There is one more point I would like to make.

25 There is a reference in the comments to the report about

1 out-of-state re-refiners in Oregon and Nevada being able
2 to accept used oil and to re-refine it. We think this is
3 inaccurate. Those facilities cannot re-refine to API
4 standards. I want to be clear about this. Anybody that
5 wants to invest in a hydrotreater should do that. And
6 having done so and having met API and California standards
7 should be entitled to the incentive.

8 But neither one of those facilities have
9 hydrotreatment and are not able to produce a re-refined
10 base loop that will satisfy API standards. That's simply
11 factually incorrect.

12 I would like to thank Adam and Mackenzie for
13 their patience with us. And thank you very much.

14 CHAIRPERSON BROWN: Thank you.

15 We have a couple more speakers on this item.
16 Bill Ross, Safety-Kleen.

17 MR. ROSS: Good afternoon, Madam Chair and
18 members of the Board. I'm Bill Ross with Safety-Kleen.

19 Safety-Kleen is the largest re-refiner of used
20 oil in the base lube -- API specification base lube in
21 north America. We have re-refineries in east which
22 Chicago, Indiana, and in Breslow, Ontario, Canada. By
23 far, we're the largest producer and understand the
24 business of used oil very well.

25 I want to thank the Board for undertaking this

1 very important effort and for the very hard work of the
2 Lawrence Livermore group, Mackenzie and Adam. We enjoyed
3 the workshop and the interchange of information that took
4 place.

5 We think the report is a good report. And it
6 sets a good baseline for California on how to decide your
7 policy going forward. And we fully support your
8 objectives of increasing used oil collections and
9 recycling.

10 And we believe that the out-of-state facilities
11 have an important part to play in that. We think there's
12 elements that floated to the top of the review and the
13 Lawrence Livermore report that we fully support, such as
14 additional testing not being required and that mandating
15 hazardous waste related criteria on out-of-state
16 facilities, such as closure, financial assurance, or
17 having the hazardous waste designation flow out of state,
18 would be counterproductive to recycling of used oil. And
19 that all efforts should really be focused on the
20 collection end. And that even the EPA looked at the issue
21 of the hazardous waste designation in the mid '90s and
22 conclusively found it would be counterproductive to
23 effective recycling.

24 That's one of the reasons that our Breslow and
25 our east Chicago refineries, again the largest in North

1 America, do not have hazardous waste permits but
2 effectively produce very high quality re-refined base lube
3 oil that meets API standards.

4 So with that, I'd like to again thank you for
5 this effort. And we want to be part of the solution with
6 the Board to improving oil collections in California. And
7 we stand ready to work with you going forward as this
8 develops into the next phase of policy decisions. Thank
9 you.

10 COMMITTEE MEMBER PETERSEN: Madam Chair, would
11 you guys be interested in building a re-refinery here in
12 California if we get this all cleaned up like this?

13 MR. ROSS: Unfortunately we are definitely
14 interested in building refineries wherever we can. But
15 having a lot of experience --

16 COMMITTEE MEMBER PETERSEN: Can I make a
17 suggestion: Build one in California.

18 MR. ROSS: We would love to.

19 COMMITTEE MEMBER PETERSEN: Great. Thank you.

20 CHAIRPERSON BROWN: How about you commit to
21 looking at the possibility of building a refinery in
22 California? And it probably speaks to the designation I
23 think that was raised earlier of used oil being a HHW
24 designation.

25 Fortunately, we don't make that determination.

1 DTSC does. And I don't think they're anywhere near
2 changing that designation. So it is a household hazardous
3 waste facility, and we know those are difficult.

4 MR. ROSS: It might be useful during the policy
5 discussions that follow on how to expand re-recovery in
6 California and maybe some inventive regulatory changes
7 that could happen to facilitate that. We are very much
8 interested in expanding our re-refining. Right now we
9 cannot meet our demand through our refineries for the
10 market demand on base lube oil. I mean, we are very much
11 limited. We're expanding \$30 million this year in east
12 Chicago and ten million at Breslow. And we are looking to
13 build more re-refineries because there is a huge demand.

14 CHAIRPERSON BROWN: Well, we'll engage you in
15 that discussion and look forward to your creative
16 suggestions. Thank you very much.

17 Our next speaker is Roy Schumacher.

18 MR. SCHUMACHER: Good morning. My name is Roy
19 Schumacher. I'm from a company called Thermal Fluids and
20 I'm not from California. I'm from Phoenix. And I wanted
21 to give a voice to out-of-state companies and also to RFO,
22 because I hear our products and our companies in some
23 respects being vilified by some of the comments that have
24 been made here today as well as in the past in the
25 stakeholders meetings that I've attended.

1 Our company, just to give you a little
2 background, is Thermal Fluids is the third largest company
3 in this industry. We operate in twelve states in the
4 United States. We operate in all states that are adjacent
5 to California. We collect and process almost as much used
6 oil as California generates on an annual basis. So we're
7 a serious company.

8 I'm also very proud to say that from a regulatory
9 compliance standpoint with EPA standards we are by far the
10 most compliant with EPA standards. And as a matter of
11 public record, I've studied the 800 some companies across
12 the United States. And we handle the oil more safely than
13 anybody in the country in our industry.

14 Regarding the vilification of RFO, today I've
15 heard black oil. I've heard exporting pollution. And
16 I've heard a scam. And that's what I'm reacting to.
17 That's not right. Adam's report himself he said this is a
18 viable product. We have base lube oil is a viable
19 product. MDO is viable. Also RFO is viable. And we only
20 create RFO.

21 And in addition to it being viable, it's also a
22 necessary part of the used oil ecosystem if you will. To
23 be able to deal with used oil, you need all three. And
24 they're all products. It's not black oil scams and
25 pollution. California is not exporting pollution.

1 California, if you go out-of-state, is exporting a very
2 valuable product that has a high demand in every state in
3 the US.

4 As far as companies who are very good in this
5 area and do a good job, I just want to say that our tag
6 line as a company is the responsible solution. And I'm
7 not kidding about that. And I invite anybody to look at
8 our record relative to that point. We care about the
9 environment.

10 We also support the Lawrence Livermore study. We
11 think that it's an excellent piece of work. It gets at
12 the idea of opening up your markets in California to allow
13 you to be able to take advantage of companies that are out
14 of state, to take advantage of companies that might invest
15 in state, to take advantage of companies that will bring
16 more technology, more competition, and dare I say a lot
17 more quality to the whole process of used oil collection
18 and processing in the state.

19 Just a couple points on testing. A point was
20 just made about testing oil, and we've got to test it in
21 California because it's -- the inference that I take away
22 is that it's going to go to some oblivious black hole
23 somewhere and not be regulated at all. That's not true.
24 That inference isn't true.

25 What is true is that the EPA in the United States

1 regulates this very highly and is very careful to make
2 sure that oil is taken care of properly. The statistics
3 in the United States actually are a little bit better than
4 what they are in California. They mirror in many
5 respects, you know, the amount of oil that's collected as
6 a percentage of total oil that's generated.

7 But what they don't mirror is the amount that's
8 re-refined. The amount that's re-refined is a full 8
9 percent more in the rest of the nation. So California in
10 some respects -- and don't take this wrong -- but is
11 behind in terms of highest and best use. That's probably
12 bad to say here. But I do -- it truly is just a fact.
13 And I think that we need to recognize that fact.

14 With that, I think those are all my remarks for
15 now. Thank you very much for your time.

16 CHAIRPERSON BROWN: Thank you, Roy.

17 Our last speaker is Phill Vermeulen. If I said
18 that wrong, I apologize. If you could keep your comments
19 to what has not been raised.

20 MR. VERMEULEN: Short, sweet, to the point.

21 Madam Chair, Phill Vermeulen, Executive Director of the
22 Independent Waste Oil Collectors and Transporters.

23 I'm here to say that Adam and Mackenzie have done
24 an excellent job. And thank you. Thank you. Thank you.
25 They validated when I stood before you several months ago

1 and said there was lies being spread about all these
2 polluters taking this hazardous waste out of the state of
3 California. And we kept saying, wait a second. If it is
4 picked up and taken in a container, how is this stuff
5 causing a problem if it's taken to a facility? And this
6 was nothing but a market share scam that's been going on,
7 talking about scams. So I cannot emphasize enough that
8 Mackenzie and Adam have done an excellent job here.

9 And my association my members stand committed to
10 helping the Board make this a reality, making my guys the
11 key people that are out literally on the streets picking
12 up the oil. And we've got to help make sure that they can
13 get as much as they possibly can and it's taken care of
14 properly.

15 Again, the out-of-state facilities are a critical
16 component. If we require them to test to California
17 standards, so be it. We don't have a problem with that.
18 We think that's important. But the testing hysteria where
19 it was said that my people are picking up and testing oil,
20 that's wrong. Right now they're not. They're picking the
21 oil and taking it to a facility and it's tested. That's
22 what needs to be done. This requirement that my guys
23 would have to test would break the system down, because it
24 would take typically three days minimum to get that oil
25 tested. So what do these little mom and pops going to do?

1 They're going to be out of business because they can't use
2 the trucks while the oil is being tested.

3 So we're saying allow it to go to out-of-state
4 facilities. Require them to test to California standards.
5 There is a paper trail through the manifest process that's
6 already in place. My people have already agreed to retain
7 samples. Many of them are already doing this. Retaining
8 samples of every load they're picking and taking up if it
9 goes to out of state. If there are any questions down the
10 line, you have a sample that's tested that will go back
11 and validate whether that is true or not.

12 So you've got a paper trail. You've got physical
13 evidence. Let's get past this hysteria and nonsense and
14 get on with it.

15 I would say one final thing. There is a bill
16 moving through the Legislature that's sitting on suspense
17 in the Senate Appropriations, AB 1195 Torrico, which if it
18 passes is going to continue this hysteria and that bill
19 has to die.

20 With that, thank you very much.

21 CHAIRPERSON BROWN: Thank you very much, Phill.

22 Dr. Love, Mackenzie, thank you very much for your
23 report to the Board.

24 I want to reiterate that this is a report by an
25 independent contractor to the Board that the Board is

1 receiving the contract. The staff will look at
2 suggestions as we evaluate, as we always do, the programs
3 here at the Board for their effectiveness and meeting
4 California's requirements and as we move forward to try to
5 divert materials. So I appreciate your hard work.

6 All the stakeholder participation, very valuable
7 and informs the process. And as we move forward and
8 consider in the future any policy changes to this program,
9 we will certainly take that into consideration and invite
10 you all back to participate in an ongoing stakeholder
11 process as we look at and evaluate any potential changes
12 to the program in the future. So that exhausts that item.

13 We do have a little bit of some time issues
14 before us, and so I'd like to make a couple of minor
15 adjustments. And as we move things, without objection, I
16 would like to move Committee Item F, which is Board Item
17 10, the review and update on implementation of Strategic
18 Directive 10, fiduciary responsibility, I would like to
19 move that to the full Board on Tuesday.

20 It's been requested that we briefly take up Item
21 G, Board Item 11, which is consideration of revisions to
22 the Board governance policy. I would believe, Elliot,
23 this is your item. Can you do rather than a full
24 presentation since we've had this discussion and it's been
25 before us before, just introduce the item and then we can

1 take questions or suggestions or comments?

2 STAFF COUNSEL BLOCK: Sure. I can go ahead and
3 do that. This item was before you before with both a
4 discussion item and then it was continued from last month
5 with some particular changes to some of the delegations.

6 CHAIRPERSON BROWN: Okay. And those are Board
7 linkage policies five to ten regarding delegations.

8 And the history behind this is many delegations
9 have been made to the Executive Director over the course
10 of the past many years.

11 STAFF COUNSEL BLOCK: Since the early '90s

12 CHAIRPERSON BROWN: Since inception of the Board
13 almost. Some of them are old and some of them are new.
14 But their in entirety, we made some changes.

15 Are there any suggestions or -- Member Chesbro.

16 COMMITTEE MEMBER CHESBRO: Yes, Madam Chair.

17 The process of delegation is a balancing act
18 between on the one hand continuing to recognize the value
19 added of a full time Board and making sure that we are
20 engaged and earning our keep if you will and having a
21 public process that is transparent -- more transparent
22 than I think non-Board departments are perceived as.

23 On the other hand, not having that process slow
24 things down or bog things down that need to happen
25 quickly. And I think that's the balancing act. And for

1 the most part, I think we've done that and it works pretty
2 well.

3 There is a temptation I think it's reflected here
4 to assume that because we've achieved 50 percent all the
5 local planning processes are administerial and don't
6 require any public discussion or exposure. And I think
7 we're not 100 percent there. We are probably 95 percent
8 there. But I don't think we 100 percent there.

9 So I would like to suggest to the Board that two
10 of the items that are in BL 9 on page 12, approve regional
11 agency formation agreements and approve planning elements
12 for newly incorporated cities, be removed and continue to
13 be agenda items.

14 There's not very many of either of these that
15 will be before the Board. So I don't think there is a
16 strong argument it's a significant staff burden.

17 And I'm always open. And Cheryl and I had a
18 discussion about this too, trying to figure out how to
19 streamline the presentation so we don't take up a huge
20 amount of time or take up a huge amount of the
21 jurisdiction's time getting going.

22 But I do think that the -- Board has acknowledged
23 we have Board turn over. We have new Board members that
24 come along. Maintaining and continuing to review the
25 first 50 percent and the mechanisms of AB 939 that got us

1 there continues to be a Board responsibility. And I think
2 those items ought to remain as Board items.

3 And I have another suggestion with regards to
4 number ten.

5 CHAIRPERSON BROWN: The first one under BL 9,
6 you'd like to remove the delegation under I?

7 COMMITTEE MEMBER CHESBRO: E and I.

8 CHAIRPERSON BROWN: Not H? Just I and E?
9 Because H is just amendments to their document. But
10 approve in the situation of newly incorporated
11 jurisdictions, those jurisdiction's planning elements
12 should be reviewed by the Board, as well as the formation
13 of a regional agency.

14 And maybe we can suggest to you, Mark, to come up
15 with a streamlined document that can be presented rather
16 than a full blown agenda item. Maybe just give the Board
17 a copy of their siting element with an analysis and
18 recommendation from Board. Like a cover memo.

19 EXECUTIVE DIRECTOR LEARY: Certainly.

20 CHAIRPERSON BROWN: Okay. So can we make those
21 changes to nine, and we can bring those back to the Board
22 on Tuesday.

23 And then the suggestion in BL 10?

24 COMMITTEE MEMBER CHESBRO: Well, I have one idea
25 that in my mind I just a few moments ago modified

1 somewhat, because I've been thinking a lot about this.
2 And that is under emergency actions I had been thinking
3 that rather than have that delegated to the Executive
4 Director that we should delegate it to the Chair with
5 consultation with the Executive Director. But because I
6 think it just now occurred to me that the Executive
7 Director normally on behalf of the Board executes all
8 contracts; is that correct?

9 CHAIRPERSON BROWN: That's correct.

10 COMMITTEE MEMBER CHESBRO: Maybe we should have
11 it be the Executive Director with the approval of the
12 Chair and then all Board members become informed.

13 But I just want to make sure that the Chair on
14 our behalf remains critical to that decision making. Not
15 that the Board has to get together or agree because it's
16 an emergency. But that the Chair approve the Executive
17 Director's decisions. So that would be my suggested
18 change.

19 CHAIRPERSON BROWN: Okay. I agree with that.

20 STAFF COUNSEL BLOCK: We can do all three of
21 those things before next Tuesday.

22 And then if I may beg your indulgence -- or are
23 you going to --

24 EXECUTIVE DIRECTOR LEARY: We're going to offer a
25 comment also, Madam Chair, to the Board. It's really in

1 the interest of clarifying more than changing anything.

2 But in BL 8 --

3 CHAIRPERSON BROWN: Before we move to that, do we
4 have any questions relative to 10? Or 9?

5 COMMITTEE MEMBER PEACE: On 9, I'm perfectly fine
6 with that. I know in the past I've voiced concerns over
7 D, approving the Five-Year Review report. I still not
8 sure whether we should be doing that. I guess I lost on
9 that point last time we discussed that.

10 And I guess you're going to have some other way
11 for us to look at these. And I'm willing to go around and
12 see how that works.

13 But I'm still concerned about not looking at
14 those and having the jurisdictions actually have to come
15 up and be before the Board and have questions and stuff
16 asked. But I'm asking to put that off. So what Member
17 Chesbro is suggesting is fine with me.

18 When it comes to the emergency actions, I'm still
19 very uncomfortable with that. Even with approval of the
20 Chair that they would be able to expend, you know, Board
21 funds, millions of dollars without the whole Board being
22 in on it. I'm really concerned about.

23 COMMITTEE MEMBER CHESBRO: The comfort I take is
24 it's only when there is declaration of the Governor of an
25 emergency. That's a fairly specific situation. If it

1 didn't include that, I would obviously very strongly share
2 your concern.

3 COMMITTEE MEMBER PEACE: I know there's been
4 several states of emergency declared while I've been here.
5 I don't I guess remember that being a real problem.

6 What were the problems that came up in having to
7 bring something to the Board? Like the Angora item came
8 before us.

9 CHAIRPERSON BROWN: I think as a matter of
10 practice, the Executive Director acts in a case of an
11 emergency where there is a declared emergency. Because we
12 don't always have the Board members together. And there
13 is a need when there is declared emergency to participate
14 in the activities relative to that emergency in a timely
15 manner.

16 All of those decisions do come to the Board or
17 those reports come to the Board. The Angora was a
18 situation where funds needed to be expended in a short
19 amount of time between Board meetings for a declared fire
20 emergency to assist with hazardous waste material
21 identification and removal from those sites.

22 COMMITTEE MEMBER PEACE: Did we ultimately still
23 vote on how much money they were asking for?

24 CHAIRPERSON BROWN: We did.

25 STAFF COUNSEL BLOCK: If I may, in the Angora

1 situation, we actually frankly just got very lucky that
2 the declared emergency was literally the Thursday before
3 we had a Board meeting scheduled. So we had the ability
4 to deal with that.

5 It did actually result in some delay. There was
6 obviously the date we had that declared emergency there
7 were folks that were wanting to mobilize immediately and
8 we did have, you know, a four or five-day delay there.

9 So really the way this is worded -- and it's
10 worded very carefully based on some input from a couple
11 months ago -- really clearly going to keep you all
12 informed on what's going on. The suggested addition with
13 the approval of the Chair is really designed to just make
14 sure we can react quickly, but not to take you all out of
15 the loop.

16 CHAIRPERSON BROWN: Right. Okay.

17 COMMITTEE MEMBER PEACE: I don't know if I'm
18 comfortable with that. You don't have the votes without
19 me. So you can take those two separately. I'm okay with
20 the ones in nine. I'm still concerned with the one in
21 ten.

22 CHAIRPERSON BROWN: Then your indulgence and we
23 need to quickly vote on these.

24 EXECUTIVE DIRECTOR LEARY: I simply wanted to
25 offer to the Board or seek some clarity from the Board in

1 regards to BL 8, 8.1c, d, and 8.2. Whenever we reference
2 interagency agreement, I would like to add, "and standard
3 agreement with local government."

4 And prior to today, we've kind of generally
5 referred to all interaction or contracts with another
6 governmental agency as an interagency agreement. We've
7 come to learn upon further analysis that an interagency
8 agreement is in fact defined as an agreement with a State
9 organization.

10 And so for the purposes of implementation of this
11 delegation, I think it's our collective intention to
12 include all contracts with other governmental agencies,
13 because they're not subject to competitive activities and
14 that kind of thing. So I'll just for the purposes of
15 clarification, I'm asking that the Board add the
16 language --

17 CHAIRPERSON BROWN: Those are like local
18 governments?

19 EXECUTIVE DIRECTOR LEARY: Local governments,
20 primarily.

21 So add the language that, "in order to execute
22 all interagency agreements and standard agreements with
23 other governmental agencies." And go on as they're
24 currently crafted.

25 CHAIRPERSON BROWN: Okay. Anybody have a problem

1 with making those changes? Okay.

2 COMMITTEE MEMBER CHESBRO: Would you like a
3 motion?

4 CHAIRPERSON BROWN: I would like a motion on the
5 changes suggested by Member Chesbro. You want to make a
6 motion?

7 COMMITTEE MEMBER CHESBRO: How about if I move
8 all of the items except for BL 10, including the
9 modifications that I suggested to BL 9. And then we can
10 take a separate motion on BL 10.

11 COMMITTEE MEMBER MULÉ: Second.

12 CHAIRPERSON BROWN: It's been moved by Member
13 Chesbro and seconded by Member Mulé.

14 Kristen, call the roll.

15 EXECUTIVE ASSISTANT GARNER: Chesbro?

16 COMMITTEE MEMBER CHESBRO: Aye.

17 EXECUTIVE ASSISTANT GARNER: Mulé?

18 BOARD MEMBER MULÉ: Aye.

19 EXECUTIVE ASSISTANT GARNER: Peace?

20 BOARD MEMBER PEACE: Aye.

21 EXECUTIVE ASSISTANT GARNER: Petersen?

22 BOARD MEMBER PETERSEN: Aye.

23 EXECUTIVE ASSISTANT GARNER: Brown?

24 CHAIRPERSON BROWN: Aye.

25 Motion passes.

1 Next motion.

2 COMMITTEE MEMBER CHESBRO: Move BL 10 as
3 modified.

4 COMMITTEE MEMBER MULÉ: Second.

5 CHAIRPERSON BROWN: It's been moved by Member
6 Chesbro and seconded by Member Mulé.

7 Kristen, can you call the roll?

8 EXECUTIVE ASSISTANT GARNER: Chesbro?

9 COMMITTEE MEMBER CHESBRO: Aye.

10 EXECUTIVE ASSISTANT GARNER: Mulé?

11 BOARD MEMBER MULÉ: Aye.

12 EXECUTIVE ASSISTANT GARNER: Peace?

13 COMMITTEE MEMBER PEACE: No.

14 CHAIRPERSON BROWN: Petersen?

15 BOARD MEMBER PETERSEN: Aye.

16 EXECUTIVE ASSISTANT GARNER: Brown?

17 CHAIRPERSON BROWN: Aye.

18 The motion passes. Thank you very much.

19 And now we will quickly move to item E,
20 Consideration of Adjustments to the Covered Electronic
21 Waste Recovery and Recycling Payment Program. That's
22 Board Item 9.

23 PROGRAM DIRECTOR LEVENSON: While Jeff is getting
24 ready, I would just like to say as, you know, this is a
25 highly controversial item. It's a matter of great import

1 for the Board.

2 I want to thank Jeff Hunts and Harllee Branch and
3 all the E-Waste staff for the tremendous amount of work
4 that has gone into this. They have really tried to adhere
5 to the parameters laid out in the statute to come to do
6 their analysis and bring this before you. And they've
7 done a great job of meeting that objective, whatever
8 criticisms we'll hear from various stakeholders.

9 They've been responsive to numerous inquiries,
10 comments. They've tried to handle all those in a fair and
11 equitable manner. And I just really want to applaud them
12 for their efforts on. I know that speaks for DTSC and our
13 collaboration with them on a variety of issues.

14 That's all I wanted to say was to acknowledge all
15 the work that has gone into this and turn it over to Jeff.

16 (Thereupon an overhead presentation was
17 presented as follows.)

18 BRANCH MANAGER HUNTS: Good morning, Madam Chair,
19 Committee members. Jeff Hunts, Manager of the Board's
20 Electronic Waste Recycling Program.

21 The program comes before the Committee this
22 morning with a significant consideration item, perhaps the
23 most significant since the program's inception back in
24 January of 2005. We have of course been before the Board
25 since that date with regulatory revision matters, notably

1 the concept of source anonymous waste, and designated
2 approved collectors. But today's item deals with the
3 heart of business matters facing the program participants,
4 and that's money.

5 The program did not seek this consideration out
6 of unilateral decision to lower payments to collectors and
7 recyclers. It would have been easier to continue paying
8 the rates that have successfully grown, the covered
9 electronic waste recycling program, into the nation's most
10 successfully e-waste program.

11 Rather, the Electronic Waste Recycling Act of
12 2003 dictates every two years the Board re-visit and
13 re-calculates the payments rates as warranted to pay an
14 average rate to the participant's net cost to recover
15 recycled covered electronic waste.

16 The Act does not direct the Board to simply pay
17 what will make everybody happy, nor does the Act appear to
18 allow the Board to take into consideration inevitable
19 costs of handling other electronic wastes that are not
20 covered by the Act or to use the payment system as a tool
21 to craft public policy regarding the ultimate disposition
22 of those wastes. Those are separate conversations that
23 the Board should have with interested parties in a careful
24 and deliberative manner with the purpose of developing a
25 more holistic approach to the management of electronic

1 waste in California along with the necessary supporting
2 statutory and regulatory framework to do so.

3 Today's item is about strictly fulfilling
4 statutory mandates within specified time frames so that
5 the Board can move ahead with the next piece in this
6 puzzle, which is ensuring financial solvency in the
7 program through fee adjustments in the near future and so
8 that key stakeholders, the collectors and recyclers who
9 provide the e-waste management opportunities to all
10 Californians, can move forward with the business
11 adjustments necessary to continue with their enterprises.
12 And program stands ready to assist with those adjustments
13 as best we are able.

14 --o0o--

15 BRANCH MANAGER HUNTS: With that, what we want to
16 cover today is a quick overview of what the Board's
17 financial obligations are, findings for the 2007 net cost
18 reports, comparison of the net cost trends over the years,
19 payment rate considerations and calculations, and staff
20 recommendations.

21 --o0o--

22 BRANCH MANAGER HUNTS: The Act directs the Board
23 establish -- the Act establishes a system to pay for the
24 recovery and recycling of covered electronic waste. Only
25 covered electronic waste from California sources are

1 eligible. Those must be recycled or canceled in
2 California to qualify for payment. The Board sets payment
3 rates to cover the average net costs of collection and
4 recycling.

5 --o0o--

6 BRANCH MANAGER HUNTS: You've seen this before.
7 This morning, we're focusing on the bottom two green boxes
8 which may soon have different numbers in them.

9 --o0o--

10 BRANCH MANAGER HUNTS: The payment rate
11 considerations are that the Board must reconsider a
12 payment schedule on or before July 1st of 2008 and then
13 every other year. The rates should cover the average net
14 cost for an authorized collector to collect, consolidate,
15 and transport covered electronic waste and for a
16 authorized recycler to receive, process, and recycle those
17 wastes. And that directive is provided in the Public
18 Resources Code. And the net cost report informs the Board
19 on what those rates should be. And the report content is
20 guided by regulation.

21 --o0o--

22 BRANCH MANAGER HUNTS: Net cost reporting is all
23 approved participants must submit an annual report when
24 directed by the Board. The Board so directed that last
25 summer. Those latest reports were due March 1st of this

1 year. We had decent compliance those we did end up
2 kicking out of the system approximately 70 participants
3 who failed to submit a report.

4 We undertook then an analysis of as-reported 2000
5 data. We saw a trend of decreasing cost continued. And
6 the Department of Finance validation exercise, which I
7 reported on last month, provides us some degree of
8 confidence that the reported figures are reasonably
9 accurate.

10 --o0o--

11 BRANCH MANAGER HUNTS: I won't spend a lot of
12 time on these charts. These are the net cost reports from
13 previous years.

14 --o0o--

15 BRANCH MANAGER HUNTS: This is the as-reported
16 2007 analysis using a sampling method that was the same
17 sampling method that was used for 2006. In fact, I
18 believe it was the same participants in 2006 that were
19 evaluated.

20 --o0o--

21 BRANCH MANAGER HUNTS: And then we took a look at
22 all submitted reports for 2007 eliminating significant
23 outliers and evaluated those costs.

24 --o0o--

25 BRANCH MANAGER HUNTS: And in this table compares

1 what --

2 CHAIRPERSON BROWN: Jeff, is that how you get the
3 weighted average?

4 BRANCH MANAGER HUNTS: A weighted average is
5 right here, Madam Chair. I'll describe.

6 The weighted average as opposed to a simple mean
7 or simple average is when you simply take all the reported
8 net costs per pound, add them up and divide by the
9 population. A weighted average allows you in calculating
10 that you take everybody's total costs and the total amount
11 of weight handled by the system, and you divide it as if
12 the entire industry was acting as a single organization,
13 as a single enterprise. And in doing so, it's contained
14 in the caveat there at the bottom. It by nature gives
15 weight to the larger amount of covered waste that's
16 handled by the larger firms. So in other words, more
17 covered waste was handled under those costs than by simply
18 averaging each individual's costs.

19 CHAIRPERSON BROWN: By the outliers?

20 BRANCH MANAGER HUNTS: This is removing the
21 outliers. But yes.

22 CHAIRPERSON BROWN: The weighted average still
23 removed the outliers?

24 BRANCH MANAGER HUNTS: Two separate concepts.
25 Outliers are data points that are a certain distance from

1 the mean. And I believe that in looking at this we used
2 something called the inner quartile methodology
3 statistical model.

4 The weighted average will again give more weight
5 to those firms that handle larger amounts of material.
6 Under a simple mean an outlier -- not an outlier -- a data
7 point that's an extreme could effect the sample or the
8 average more.

9 What this table does show is 2005, 2006, and 2007
10 the samples with the average weighted net cost going down
11 and the 2007 all reports figures for recovery and
12 recycling and then the combined amount.

13 --oOo--

14 BRANCH MANAGER HUNTS: Program looked at what
15 other considerations can the Board take in looking at
16 establishing a new payment rate. Intents of the Act
17 identified. The Act talks about establishing a free and
18 convenient system for collecting covered electronic waste.
19 It talks about establishing an economically viable and
20 sustainable industry that maximizes businesses and
21 employment. Reconciling those lofty ideals with the
22 directive to the Board to simply pay an average net cost
23 is not a perfect fit by the virtue of the fact that
24 averages do not cover everyone's cost. There will be a
25 population whose costs are more than covered and a

1 population whose costs are not covered.

2 --o0o--

3 BRANCH MANAGER HUNTS: The regulations which
4 guide the development of the net cost reports allows for a
5 reasonable profit or a reasonable return to be considered
6 as a cost component. The net cost reporting form did not
7 contain a line item for objective reporting of that.
8 Rather, it contained a line item that allowed for
9 reporting participants to suggest a reasonable profit.
10 This as you can imagine led to divergence objective
11 opinions about what reasonable profit or reasonable return
12 should be.

13 The program then examined several other
14 alternatives for establishing or incorporating a concept
15 of profit in establishing the payment rates. We looked
16 at, for instance, the bottle bill, which ties a reasonable
17 return to a Dune and Bradstreet indices for scrap. I
18 believe it's about five and a half percent.

19 We looked at the risk management associations
20 indices or financial benchmarks for hazardous waste
21 management that was substantially higher.

22 What staff and program arrived at is the proposed
23 ten percent is a reasonable return of ten percent to be
24 added to the average net cost.

25 --o0o--

1 BRANCH MANAGER HUNTS: And then conducted the
2 following calculations.

3 Program is recommending:

4 That we use as reported 2007 data with the
5 outliers removed.

6 Use of the weighted average cost including ten
7 percent reasonable return on to that average, round to the
8 nearest whole cent.

9 And at the bottom there the calculations where we
10 arrive at 16 cents per pound proposed recovery payment
11 rate and a 23 cent per pound proposed recycling payment
12 rate.

13 --o0o--

14 BRANCH MANAGER HUNTS: Now the payment rates are
15 regulations. There's currently a recycling payment rate
16 that was established in statute that was 28 cents per
17 pound. It was to remain in effect until the Board enacted
18 new rates.

19 The two bottom bullets there from Title 14 is the
20 proposed language. I've passed out to you a revised
21 Attachment 4 I believe that has more complete regulatory
22 language in reviewing the complete set of regulations.
23 There are three places where we use the combined payment
24 rate as part of an example calculation. And we needed to
25 incorporate that into what we would change as part of the

1 regulatory language. It's not substantive in terms of the
2 actual rate setting.

3 --o0o--

4 BRANCH MANAGER HUNTS: Upon Board approval of
5 adjust rates, program will work with legal on revising the
6 regulations and working with the Office of Administrative
7 Law in a print only filing. And based on those new rates,
8 the program will refine the fee adjustment models to
9 maintain solvency.

10 We anticipate returning to the Board as soon as
11 possible in June with the adjustment considerations. And
12 those fee adjustments we've learned may entail enacting
13 emergency regulations, because we do not currently have
14 regulations for the fees.

15 --o0o--

16 BRANCH MANAGER HUNTS: And at the last Board
17 meeting, there was concerns raised about the
18 possibility -- I'll say probability that fraud exists in
19 the system. Any time tens of millions of dollars are
20 flowing through an enterprise, somebody will be taking
21 shortcuts.

22 That's a significant certain, both because of the
23 amount of money, because it's wrong, and because we want
24 there to be a very competitive business environment out
25 there, but it should be fair business.

1 The Waste Board and DTSC collaborate to detect
2 and deter and prosecute fraud. We have an MOU that was
3 established last summer to conduct ourselves within, not
4 that we weren't working together before that, but it lays
5 out specific rules and responsibilities.

6 And non-compliance, meaning misbehavior really
7 cannot be tolerated. We do not have a tolerance for it.
8 We are pursuing it.

9 I've asked Gale Filter, who's the Deputy Director
10 of DTSC's enforcement program, to join us in morning and
11 say a few words about DTSC's work with the Board on fraud.

12 CHAIRPERSON BROWN: Welcome, Gale.

13 MR. FILTER: Good morning, Madam Chair, members
14 of the Board. My name is Gale Filter. I'm the Deputy
15 Director of Enforcement with the Department of Toxic
16 Substances Control.

17 What you should know is I'm a career prosecutor.
18 Up until last year I was a Deputy Executive Director at
19 the California District Attorney's Association where I
20 headed among other things a circuit prosecutor project for
21 nine years. In those nine years, we prosecuted over 2,000
22 cases. Indeed, my last trial was an Integrated Waste
23 Management Board case on waste tires up in Nevada County.

24 Of the more than 2,000 cases that we processed in
25 those nine years, I never saw an e-waste case. Not a

1 single one. Moreover, I know of no prosecutor in this
2 state -- and I still have pretty good connection with the
3 prosecutors in the state -- that have done an e-waste
4 fraud case. That's not to say there hasn't been any. But
5 I don't know of any.

6 Given that, when I started last year, one of the
7 first things that we did at DTSC was create a forensic
8 fraud unit. It was my view if we were really going to
9 pursue this, you're going to have to re-think about how
10 you approached fraud. And one of the first things that I
11 did was I have found a very capable accountant at DTSC and
12 bribed that person to go to forensic auditor school, which
13 he did and now he's a certified forensic accountant.

14 And also it was my view you needed a person who
15 was skilled as a forensic computer expert, and you needed
16 auditors, and you needed an investigator who knew what to
17 look for. Because in any fraud cases -- and I have done
18 fraud cases -- you need to know where the money is going.
19 And that is what we're trying to do. And I have to tell
20 you, fraud cases are not an easy thing to get ahold of.

21 So given that, let me just sort of give you an
22 overview of what I think is happening this last year. The
23 computer forensic fraud unit is up. I'm pleased to tell
24 you that yesterday I was informed that we have indeed
25 reached settlement in the first e-fraud for Department of

1 Toxics, the first e-waste fraud case. Kind of an
2 interesting case, because a collector was submitting
3 fraudulent claims to the recycler, which was in turn was
4 submitting the claim to you. And they were using
5 fraudulent documents, fictitious names, replicating the
6 names on the forms that they were submitting. And indeed,
7 in June of last year I think it was, we had actually
8 executed two search warrants.

9 That's one of the tools that the Department of
10 Toxics brings to this war, if you will. Because we have
11 criminal investigators and we know how to put together
12 search warrants in order to have them approved by district
13 attorneys and execute them where we need to go.

14 As a result, we were able to interestingly
15 enough -- I mean, this is a case -- it's unbelievable --
16 that we basically opened and based was in about 15 months.
17 And the case is going to settle out.

18 I'd just like to sort of give you what I've
19 learned about this. The woman who was submitting the
20 fictitious claims was asked, "Do you know what you were
21 doing was wrong?"

22 And her comment was, "Yeah, but I didn't think it
23 was a big deal."

24 And then she was later asked, "Well, if you new
25 it was wrong and you didn't think it was a big deal, why

1 were you doing it?"

2 "Well, because nobody was checking. We thought
3 we could get away with it."

4 So in other words, I think the efforts, the
5 collaboration that exists between DTSC and the Waste
6 Management Board, Jeff, and others, is something that is
7 developing and evolving. It's an evolving process. We're
8 learning as we go along.

9 I would argue to the people who seem to be
10 impatient with the number of cases that again, these are
11 really troubling cases.

12 I just took a case, flew it down if you will to
13 the L.A. district attorney, and I had to basically educate
14 that prosecutor what it is that we're doing and thankfully
15 he's taking the case. We have another case in Imperial
16 County, and it ended up that we have 25 to 30 truckloads
17 of CRTs sitting down in an empty lot in Imperial County.
18 They were submitting claims to the broker who was
19 representing that he was going to take them to a recycler
20 in Mexicali.

21 I was just told by the inspector in this case
22 those CRTs have been sitting on the ground down there
23 since August of last year. And the recycler in Mexicali
24 says we haven't received any CRTs from this company since
25 August of last year. So the question becomes where are

1 all of these CRTs? What are they doing? They're floating
2 around out there. And needless to say, if you don't have
3 the tools of enforcement to tackle this, we're not going
4 to go anywhere. And there has to be an effective
5 deterrent in order to battle this sort of thing.

6 I think you're on the right track. I think that,
7 you know, as I said, we've already got three cases. Two
8 of them have been -- one of them has been referred for
9 criminal prosecution, and another will. And I can tell
10 you by doing this your litigation process is probably
11 going to roll out from the time it's filed -- the case is
12 filed for another year or two years, because that's the
13 nature of the beast. It doesn't move in leaps and bounds.
14 The litigation process moves incrementally.

15 If you have any questions, I would be happy to
16 answer them. But I think you've got a good program. I
17 think you've put the blocks in place, so to speak. I
18 think it's pretty exciting. I've never done this sort of
19 thing before. But it intrigues me. And I always like to
20 catch bad guys.

21 CHAIRPERSON BROWN: Gary.

22 COMMITTEE MEMBER PETERSEN: First of all, thank
23 you very much for coming and explaining what's going on
24 and how you set this up.

25 When the fines are levied and collected, where

1 does that money go?

2 MR. FILTER: Well, it depends on a number of
3 things. There's usually a statutory provision that tells
4 you how the money will be distributed given what the
5 statute says. If it's under the Health and Safety Code, I
6 believe that provision -- I think some of the money goes
7 back into the e-waste if I recall correctly. But I'm not
8 sure.

9 BRANCH MANAGER HUNTS: There is a penalty
10 subaccount for successful prosecution of fraud. But since
11 DTSC does have fraud latitude to enforce under a range of
12 rule, certain violations that aren't specific to the
13 covered waste programs it goes into their accounts.

14 COMMITTEE MEMBER PETERSEN: Thank you for what
15 you're doing. Thanks for the help. We need it.

16 CHAIRPERSON BROWN: Cheryl.

17 COMMITTEE MEMBER PEACE: Thank you. This is
18 really interesting.

19 In the couple of cases you mentioned, can you
20 give me what is the penalty? What kind of money are we
21 talking about?

22 MR. FILTER: Well, it depends. We've referred
23 the case out. The one we referred to the district
24 attorney, I talked to that person. And they basically --
25 if it's over \$400, if you can show there is a loss to the

1 State of over \$400, you can basically file this thing as a
2 felony, okay. That was his intent.

3 Now, as it moves along and you find out that the
4 evidence is perhaps not quite as good as you thought it
5 was at the outset, it may resolve itself into something
6 else.

7 But it could be settled, for example, on a 17200
8 with the Businesses and Professions Code on fair
9 practices. It could be settled under provisions of the
10 Health and Safety Code. The case that I mentioned in
11 Imperial County, investigator wants to file the case
12 depending upon what the sampling results is a felony
13 disposal of hazardous waste.

14 COMMITTEE MEMBER PEACE: And what would the
15 penalty amount be?

16 MR. FILTER: The penalties if I call correctly is
17 that disposal of hazardous waste it's \$100,000 a day for
18 every day. That's what's known as a wobbler. That's
19 really a kind term. But it means you could do a year in
20 jail or 16 months or three years in prison. That's up to
21 the judge.

22 COMMITTEE MEMBER PEACE: I sounds like a
23 deterrent. I didn't know what the fines were and if there
24 was anything like a three strikes and you're out.

25 MR. FILTER: It could be. It depends on if you

1 have strike behind you. But again, there's all kinds of
2 provisions. Bottom line is I don't know anyone who's ever
3 gone down on three strikes for pollution.

4 COMMITTEE MEMBER PEACE: Thank you.

5 CHAIRPERSON BROWN: Thank you, Gale.

6 I think that it's obvious that wherever there is
7 money involved, fraud will exist. We see it in Medicare,
8 Medical, all kinds of programs across the program and it
9 was contemplated in the bottle bill.

10 And you know, we can't recoil at the thought
11 there is fraud that exists in a program. But it also does
12 not mean that we are not going to be vigilant in our
13 efforts. And we appreciate you sharing in our commitment
14 to strong enforcement of this program. So thank you very
15 much for being here. I appreciate it.

16 MR. FILTER: It's a pleasure working with you.

17 BRANCH MANAGER HUNTS: Thank you, Gale.

18 So with that --

19 --o0o--

20 BRANCH MANAGER HUNTS: -- on to staff's
21 recommendation, which is for the Board to concur with
22 staff's analysis of the net cost data and determination of
23 an average net cost for both the recovery and an average
24 net cost for the recycling of covered electronic waste, to
25 accept staff's proposed new statewide recovery payment

1 rate and statewide combined recovery payment rate of 16
2 cents per pound and 39 cents per pound respectively and
3 adopt Resolution 2008-82 and associated regulatory
4 language that I distributed to you.

5 CHAIRPERSON BROWN: Let me ask you a question.
6 Given this and the fact that it is going to be a nine cent
7 combined reduction in the current reimbursement rate, what
8 is staff's thoughts or considerations for implementation
9 of this recovery rate, either to the collector or the
10 recycler combined for implementation to allow the industry
11 to adequately prepare for the change over?

12 BRANCH MANAGER HUNTS: That's a good question.
13 As proposed and contained within the resolution, program
14 is proposing that the rate changes take effect
15 simultaneously and on July 1st, 2008. That's the general
16 guidance that is provided by statute when it directs the
17 Board to establish a payment schedule on July 1st of an
18 adjustment year. There's really no guidance to the
19 contrary.

20 What staff has proposed or has prepared is an
21 alternative that would allow for a phased-in approach of
22 the rate change so that a recovery payment made by a
23 recycler under an old rate could be recouped by that
24 recycler through an interim period and an interim combined
25 statewide recovery and recycling payment rate prior to the

1 full rate adjustment taking effect. And I could run
2 through that if you're interested.

3 CHAIRPERSON BROWN: Why don't you do that for our
4 consideration.

5 BRANCH MANAGER HUNTS: I've got some language
6 and an alternative.

7 --o0o--

8 BRANCH MANAGER HUNTS: As proposed, the new
9 rates would take effect immediately as the slide in the
10 previous presentation showed. July 1st for both the
11 recovery payment rate, 16 cents, and the combined payment
12 rate of 39 cents.

13 That creates a potential conflict where the
14 recovery payment made under one rate, for instance, the
15 existing 20 cent per pound, would not be able to be
16 directly recouped by the recycler who made that payment
17 within the combined payment rate.

18 Now, however, the regulations that govern this
19 program recognizes that because we're paying average rates
20 that the rules of the game need to allow businesses to
21 conduct business. And that is that that it allows
22 businesses to charge each other fees for when their costs
23 are not covered. So the program technically has an out or
24 an accommodation for participants now that would allow
25 recyclers to put their collectors on notice that a fee is

1 changing. You're entitled to less. And because my costs
2 are set at X, I'm only going to pay you Y.

3 --o0o--

4 BRANCH MANAGER HUNTS: Program believes it is
5 reasonable to have an alternative implementation schedule
6 that phases in recovery payments -- phases in the new
7 payments setting the recovery payment rate at 16 cents per
8 pound, the new rate July 1st, and then having an interim
9 period where between July 1st and ending that August 31st
10 as it says on your handout -- that is the old recovery
11 payment rate and the new recycling payment rate, which has
12 been the 43 cents. And then beginning September 1st, a
13 complete transition to the new combined rate of 39 cents.

14 This would allow participating recyclers to clean
15 out the material that's in their pipeline, the material
16 they've received from collectors, and they've paid the old
17 rate on, to file a claim with the State, and have those
18 claims reviewed under an interim scheme that keeps them
19 whole.

20 CHAIRPERSON BROWN: Okay. Thank you. Any
21 questions?

22 We do have a couple of speakers. So maybe we'll
23 have them come forward. Thank you for preparing that.
24 That addresses my question as to how we move forward and
25 allow for business to continue to be conducted in this

1 uncertain time.

2 Our first speaker is John Shegerian.

3 MR. SHEGERIAN: Hello, Madam Chair. Thank you
4 again for having me here.

5 Last evening, I forwarded a letter to the entire
6 Board -- my second letter in the last two weeks. I'm
7 going to read portions of that letter into the record
8 today. And none of these -- my next comments are in any
9 way to meaning to demean Jeff Hunts's efforts to come up
10 with --

11 CHAIRPERSON BROWN: John, can you hold one
12 second? Kristen has copies of your letter for members who
13 did not get it. If you could hand those out, that would
14 be great. I want to make sure everybody has it. Okay.
15 Thank you.

16 MR. SHEGERIAN: Sure. Jeff Hunts has been a
17 friend of mine for over three years, and he has made
18 nothing but a 200 percent effort to manage what has become
19 the most successful electronic waste recycling program in
20 the United States. So none of these comments, even though
21 we might be in opposition in our beliefs or some of the
22 facts that exist today, are meant to be against Jeff Hunts
23 personally. Jeff has done a more than amazing job with
24 this widely successful program.

25 I'll read you some of any comments. Excuse my

1 voice.

2 Again, Madam Chair, thank you for all your
3 efforts on the CIWMB and specifically in reviewing the SB
4 20/50 program. The California SB 20/50 program has
5 successfully recycled over 400 million pounds of covered
6 electronic wastes, which makes us the leader in the nation
7 in environmental sustainability. But I do have grave
8 concerns.

9 As a follow up to my testimony on April 15th,
10 2008, and my past e-mail dated May 15th, 2008, to all
11 members of the CIWMB, it is important to review the
12 following facts before making any decisions today or
13 voting next week on a new potential payment schedule and
14 implementation date for recyclers and collectors.

15 As we note, Jeff just proposed a nine cent pound
16 reduction off the 48 cent per pound payment schedule.
17 This is 18.75 percent. It would be unprecedented and a
18 grave decision in this reduction does not follow the
19 intent and stated procedures in the SB 20/50 bill. Due
20 process needs to be included in any analysis, decision,
21 vote, and implementation of payment schedule changes.

22 Fact number one: Accurate average net cost
23 reports are defined as -- and let me state, the nine cent
24 reduction proposed by staff is not based on accurate net
25 cost reports. 2007 is a year past. There's nobody in

1 this room that makes decisions based on 2007 facts when
2 we're living in a brand-new world and a brand-new economy.

3 Last year, oil, for example, was \$50 a barrel.
4 This morning, it was \$124 a barrel.

5 Net cost reports based on last year's net costs
6 have no basis in reality of today in doing business in the
7 real world. We are the number one electronic waste
8 recycler in the state. We have the scale and the
9 procedures in place to make sure that we squeeze every
10 dollar and we share the cost wherever we can and we
11 maximize all of our scale every day to the point that
12 after four years of running this company I still do not
13 take a salary and we are making pennies on the 48 cents a
14 pound. Four pennies is what we make of 48 cents. And
15 I've shared these numbers which have been audited by
16 Deloitte & Touche with staff here at the CIWMB.

17 The accurate net cost reports have to be reviewed
18 before CIWMB can implement a thorough audit verification
19 with accuracy and fraudulent net cost reports have to be
20 taken out of the system. All the net cost reports,
21 whether it's 2007 or 2008, have not been audited, nor have
22 they been submitted to the CIWMB under pain of perjury.

23 A number of the recyclers have submitted false
24 net costs. One person, one recycler even put six cents
25 in. Six cents. So net cost reports that are inaccurate

1 have created an artificially low and inaccurate net cost
2 report that is being reported today.

3 With regards to this year's net cost reports,
4 which were submitted as Mr. Hunt said on March 1st, and
5 today is May 13th, there has not been sufficient time
6 under any circumstances to accurately authenticate what
7 the true net costs reports are in 2008. Partially
8 fraudulent net cost reports and information and inaccurate
9 net cost reports are leading up to very flawed decision
10 making today.

11 Fact number two: Enforcement and removal of
12 fraudulent recyclers. Since implementation of SB 20/50 --
13 and we are now 41 months into the program, the program has
14 not been successfully enforced. Physically enforced is
15 what I'm talking about. Staff has done an amazing job on
16 the paperwork side of this enforcement. But I'll give you
17 a real life example. And I know Mr. Gale was up here was
18 a little while ago.

19 But last, Friday a member of the DTSC was in my
20 facility, as many of you Board members have been in my
21 facility. And the purpose of coming to my facility after
22 41 months was to learn what the benchmark facility looks
23 like and learn how to physically catch acts of fraud by
24 other recyclers.

25 We were informed by many members of staff and of

1 the DTSC that it is now going to take six to twelve months
2 to physically enforce the regulations in catching
3 fraudulent recyclers that are acting in the field
4 inappropriately.

5 Since fraudulent recyclers have not been removed
6 from the program and fraudulent recyclers are part of the
7 average net cost reports, making the average net cost
8 reports low and inaccurate, we cannot make any decisions
9 today until enforcement commences in earnest with full and
10 active enforcement staff is adjudicated and punishments
11 are dispensed. None of that has occurred to date.

12 Due process, fact number three. Accurate net
13 cost reports are the foundation of the CIWMB to change the
14 payment schedules to recyclers. The CIWMB may establish
15 the new payment schedule to the recycler on or before July
16 1st 2008.

17 But due process with regards to implementation
18 dictates the following. The implementation of the new
19 payment schedule as is the legislative intent is that the
20 recycler to the recycler -- the implementation to the
21 recycling and collector may be at a later date than July
22 1st, 2008. The law allows and precedent has been
23 established to have the implementation of any new payment
24 schedule to recyclers to be a later date than July 1st,
25 2008. For instance, the Electronic Waste Recycling Act

1 was passed in 2003 and implementation didn't occur until
2 January 1st, 2005, allowing a significant and appropriate
3 grace period for all the stakeholders to adjust.

4 The other fact is that if the fees were raised to
5 the consumers, if they were -- and that has to be decided
6 on or before August 1st of this year, it says by statute
7 the other stakeholders, the consumers, and the retailers
8 are given to January 1st of the following year to make
9 adjustments. It would be against legislative intent and
10 due process to make a decision today or next Tuesday and
11 five weeks later expect all recyclers and collectors to be
12 able to make the appropriate business, banking, and other
13 necessary adjustments to an 18.75 reduction in costs.

14 The recyclers are the backbones of this business.
15 They advance -- right now the way the system works, the
16 State pays us for to six months in arrears of making
17 claims. We advance all the moneys, the collector fees,
18 compliance, audits, freight, packaging, and labor needed
19 to successfully operate the SB 20/50 program.

20 Combined, all the recyclers forward over \$40
21 million to the SB 20/50 program before we are paid out by
22 the program. And by cutting these fees and implementing
23 this change simultaneously, it would put these recyclers
24 including ourselves at grave financial risk.

25 Besides putting us at grave financial risk, it

1 would risk harm to the public health, safety, and
2 environment of the citizens of California because more
3 illegal dumping of electronics would occur both in the
4 state, to other states, and as was pointed out in the
5 January 2008 National Geographic article, it would promote
6 more illegal dumping of California electronic waste into
7 third world nations.

8 I don't want to just come to you all today with
9 problems. I have four solutions, and then I'll sit down.

10 The time must be taken to fully investigate,
11 audit, and authenticate the true net cost of recyclers in
12 the real world in 2008.

13 Fraudulent recyclers must be vetted out, and net
14 costs must be truly audited so a real weighted balance can
15 be arrived at before any numbers are adjusted downward or
16 upward for that matter.

17 All claims against recyclers must be fully
18 investigated. And as I said earlier, the DTSC must put
19 people in the field to designate who is committing fraud.
20 Must be adjudicated and also punished.

21 Once a new accurate net cost report is arrived at
22 and staff recommends a number, then an appropriate grace
23 period equal to the grace period for other stakeholders is
24 needed to allow all legitimate stakeholders, such as the
25 recyclers and collectors, time to adjust to the new

1 payment schedule. And this is for the protection of the
2 residents of the state of California and the residents and
3 citizens beyond our borders.

4 If the fees to the recyclers and collectors are
5 egregiously dropped -- that's proposed with only four
6 weeks notice -- this would be in collect opposition of the
7 legislative intent of SB 20/50 and would be in direct
8 opposition of due process.

9 Forty-one months with no prosecutions, with no
10 recyclers thrown outs of the program. The net cost
11 reports at best are partially wrong. Making any decisions
12 based on partially wrong information would be a fully
13 flawed decision. Much is at stake today. This is one of
14 the trademarks of California's green initiatives. It
15 might be one of the most successful new programs in
16 California and in the United States with regards to
17 environmental sustainability.

18 I have forwarded this letter to members of my
19 Board, and they have instructed me that if I can't find
20 relief here to seek relief otherwise with regards to the
21 issues of due process and implementation. Specifically,
22 yesterday, my Board instructed me to forward these claims
23 and information to the attorney general in the state of
24 California and other members of the Legislature and the
25 media.

1 Millions of dollars have been put at risk because
2 of some of these recommendations and an implementation
3 schedule that is not even spoken to in the statute.

4 I seek relief from the Board, and I ask to give
5 pause to review the numbers and any proposed
6 implementation date before any forward motion is taken on
7 the proposals that were just put forth.

8 Thank you for your time. And I will take any
9 questions if anyone has any questions.

10 CHAIRPERSON BROWN: Thank you, John, for being
11 here. I think you pretty well laid out where you stand on
12 a number of the issues. I don't know if staff has some
13 specific concerns.

14 I believe that I do have a question. Reports and
15 net cost reports that are submitted by recyclers, they are
16 obligated to sign under the penalty of perjury.

17 BRANCH MANAGER HUNTS: Net cost reports are
18 submitted containing the signature block specified in
19 regulation, which has them submit them under penalty of
20 perjury.

21 MR. SHEGERIAN: Not one recycler has been
22 prosecuted for that. That's basically a Mickey Mouse
23 signature. And not what has been thrown out of the
24 program to date.

25 CHAIRPERSON BROWN: With all due respect, John,

1 that is the law and law that we are required to work
2 under. I so am just asking Jeff to respond to a specific
3 question regarding submission of reports, because you did
4 allege that none of them are submitted under the penalty
5 of perjury. And they are.

6 MR. SHEGERIAN: They're unaudited. And for six
7 cents to be used as part of the weighted average and other
8 reports to be used, the numbers are not right. And the
9 2007 numbers have nothing to do with 2008.

10 CHAIRPERSON BROWN: Well, I think there is a
11 couple of points that need to be made, which is that the
12 law, as you stated, does not speak specifically to
13 implementation. It does speak very specifically about how
14 the Board is to determine an average net cost per the
15 administering of this program at least to the Board.

16 I think if they had intended it to be
17 simultaneous with a consumer fee, they would have said so.
18 But they did not. And they very specifically said in the
19 statute that the consumer fees should not be tied to the
20 consideration of the recycling fee. That the recycling
21 free needs to be taken as a net cost average for repayment
22 and recovery of these materials.

23 The consumer fee we are very deliberately taking
24 separate, although we know there is an item we are
25 anticipating next month to address the consumer fee

1 because staff has determined that, you know, we are paying
2 out considerably higher than what we are receiving in
3 payments for these materials. So that will be taken
4 separately. But that implementation has no bearing on
5 where we are today with the payment for the recycling.

6 MR. SHEGERIAN: I agree with your point, Madam
7 Chair. But the point on that issue was due process.
8 Since if you even contemplated or did raise the fees to
9 the consumers, they would be allowed a period of
10 adjustments, just like the retailers were, and would be a
11 five-month grace period as by statute. How can you not
12 allow -- it would be absolutely against any precedent in
13 the state of California, legal or implementation strategy,
14 to not allow a similar grace period under the laws of due
15 process for an adjustment for recyclers and collectors
16 which are the other half of the equation, even though they
17 might not be tied in your analysis, which I agree with.
18 The issues of due process are tied.

19 CHAIRPERSON BROWN: Staff has advanced a proposal
20 for the implementation of the delay. Is there an option
21 to not split the fee? I mean, I think one of -- what if
22 we don't split the fee and the whole thing is cut or the
23 whole thing is implemented at the same time?

24 I think there's considerations or we need to have
25 a thorough discussion as to whether we implement one fee

1 in one month and then phase in and do the other fee. Is
2 there something that we should take into consideration?

3 BRANCH MANAGER HUNTS: In discussing with
4 counsel, program arrived at the proposal contained in the
5 item, that July 1st, because that appeared to reflect the
6 cleanest outcome as guided by what was available in
7 statute.

8 But the alternative I presented provides some
9 relief, recognizing the reality of material flow. I'll
10 defer to counsel on this. Statute, as John correctly
11 points out, is silent on when a fee or when a new payment
12 rate is imposed. However, given that the Board's
13 responsibility is to determine what the net cost of doing
14 business in this industry is, the average net cost, once
15 the Board has decided that they're paying out too much, how
16 many more months should the Board continue to pay out too
17 much.

18 CHAIRPERSON BROWN: Thank you. And I think that
19 one of your suggestions was regarding fraud. And I think
20 I spoke after Gale mentioned there's fraud wherever
21 there's payment. So we have to understand and know there
22 is going to be a degree of fraud that is in the program.
23 It doesn't mean we accept it or tolerate it, but there is
24 going to be fraud.

25 And California has a payment program that, just

1 like the bottle bill, when the bottle bill was passed, we
2 knew there were would be fraud and we are going to protect
3 ourselves again that. We are doing that and working
4 towards that. And we are far ahead of the schedule that
5 the bottle bill realized in detecting fraud and enforcing
6 fraud in this program.

7 So I do need to make sure that is recognized that
8 it may not be fast enough for those of you who are
9 competing in the same industry with those who are frauding
10 the program. But we're addressing the issue at a far
11 greater pace than any other program like this that's being
12 administered anywhere else in the state.

13 MR. SHEGERIAN: I agree with your comments to the
14 point that the efforts have been always focused on that by
15 you and other members of the Board I've spoken with
16 personally and know personally also with Jeff Hunts.

17 But the fact remains -- forget the competitive
18 marketplace. That will be handled by business practices.
19 But when you're making decisions today or next week based
20 on average net cost reports which include partially
21 fraudulent information that has not been vetted out of the
22 program yet, that's where then the decisions become flawed
23 because those decisions are based on partially fraudulent
24 net cost reports. That's the problem I have with it.

25 Not in this real world competitive marketplace,

1 but the adjustments of fees based on fraudulent numbers
2 and fraudulent competitors that are yet to be vetted out.
3 You make one fraudulent recycler do a log or two and you
4 will see a normalization in this industry and the real net
5 cost average -- new net costs will start to rise to the
6 top. Right now, we don't have that opportunity. And
7 that's my point to you even though I agree with everything
8 you just previously said.

9 CHAIRPERSON BROWN: Well -- and I don't think
10 it's going to advance this discussion. We do have another
11 speaker. But in this discussion and the determination of
12 average net cost they utilized a weighted cost average and
13 those outliers that you're alleging are pulling down the
14 fee are taken out of the effect on determining the average
15 net cost. So am I reading that correctly, Jeff? I mean,
16 the outliers are not necessarily part of the weighted
17 cost?

18 BRANCH MANAGER HUNTS: Data points that are at
19 the edge by using the weighted average and assuming that
20 the data points at the edge of the population are not
21 handling the same volumes, that those enterprises are more
22 in the middle of are the effect is diminished.

23 I guess a question I have about the allegation of
24 fraudulent net cost reports is that if a participant in
25 our system who estimates a net cost report, albeit

1 self-calculated, self-reported, intending to defraud the
2 system, why would they low ball it? Why would they --
3 since all participants in the system know we use the net
4 cost reports to calculate the rate, why would someone
5 purposely report low?

6 COMMITTEE MEMBER MULÉ: Jeff, thank you. That
7 was my question. I would think that they would round
8 those numbers up rather than down. So anyway, my thoughts
9 exactly. So thank you.

10 Anybody have any questions?

11 COMMITTEE MEMBER PEACE: On one of the points he
12 said we're basing the payment rate reduction on 2007 net
13 cost reports and we can't raise them again for two years.
14 We already know that costs are up by 20 percent from 2007
15 with fuel and energy and inflation on the horizon. How
16 much of that have you taken into consideration in this new
17 fee?

18 BRANCH MANAGER HUNTS: None of it. We looked at
19 the net cost for 2007 and averaged that and then added the
20 ten percent for reasonable return.

21 COMMITTEE MEMBER PEACE: We can't do that,
22 because the way the law is written.

23 BRANCH MANAGER HUNTS: No, I did not say that.
24 I described the way we arrived at the payment rate we
25 we're proposing. So in other words --

1 COMMITTEE MEMBER PEACE: Do we know is 20 percent
2 too low?

3 BRANCH MANAGER HUNTS: I don't know where 20
4 percent figure came from that you're referring to.

5 COMMITTEE MEMBER PEACE: I think economists and
6 all the stuff at least I've read basically says because of
7 energy, because of transportation costs up that the cost
8 of doing business this year are already going to be 20
9 percent higher --

10 BRANCH MANAGER HUNTS: I believe certain costs
11 are up. Certainly transportation fuel costs are up. Real
12 estate market's softening. So perhaps rents are going
13 down. Commodity prices are up.

14 CHAIRPERSON BROWN: I think the marginally
15 dangerous territory to go in is that it's speculative,
16 it's not based on any concrete numbers that the Board has
17 access to in order to determine a cost.

18 And the reason that the Board determines cost
19 based on 2000 average net costs is because those are the
20 numbers we have. We can't look in a CRYSTAL ball and
21 anticipate what the costs are going to be to do business
22 in six months, because we don't know. We cannot
23 speculate. And the law does not allow us to necessarily
24 speculate.

25 MR. SHEGERIAN: You make a great point, since

1 speculation not factored into, let's go back to what
2 Chairperson Peace just said. And why don't we take a
3 little pause and do the average net cost report for 2008.
4 That's what the change should be based on.

5 CHAIRPERSON BROWN: But we can't.

6 MR. SHEGERIAN: Why not?

7 CHAIRPERSON BROWN: Because it's not allowed in
8 the law.

9 MR. SHEGERIAN: They've been submitted as of
10 March 1st.

11 CHAIRPERSON BROWN: We are required to look at an
12 average net cost. We can't anticipate 2008 costs until
13 2008 has passed. And then you're going to be having the
14 same argument that we can't use 2008 numbers for a
15 calculation for 2009.

16 So what I was anticipating is that we only have
17 the numbers we have based on the cost of doing business
18 retrospectively.

19 BRANCH MANAGER HUNTS: Just to clarify, the
20 reports that came in March 1st, 2008, covered 2007
21 operating costs.

22 CHAIRPERSON BROWN: Right.

23 MR. SHEGERIAN: Let me just share a reality for
24 the Board here. Since March 1st, 2008, and May 13th,
25 2008, the price of Bear Stearns stock went from \$159 a

1 year ago to \$60 twelve weeks ago to three dollars today.

2 The credit markets in the business world has changed. The

3 business world is what supports this SB 20/50 program.

4 The government does not run the program and operate the

5 facility and pay for the employees and the shipping and

6 all the other costs that attenuate with running a real

7 business.

8 So theoretical average net cost reports are fine.

9 But making decisions in the real world that you're doing

10 today or next week that are flawed is not what is the

11 legislative intent.

12 COMMITTEE MEMBER PEACE: Can I ask one more

13 question?

14 Jeff, in one of your slides where it says other

15 considerations, it says intends identified by the Act SB

16 20/50, free and convenient system. And then on page 9 of

17 the agenda item under stakeholder impacts, the Board's

18 regulations allow for participants to assess service fees

19 on each other and the public to cover potential costs. So

20 what does that exactly mean? Because I have the

21 impression if I take my computer somewhere I don't have to

22 pay to take it --

23 BRANCH MANAGER HUNTS: The overall intent of the

24 Act is to establish a recovery infrastructure that affords

25 all Californians the opportunity to dispose of covered

1 electronic waste cost free and conveniently, because
2 statute also directed the Board to pay an average payment
3 rate.

4 The rate to pay may not cover all service -- by
5 definition will not cover all service provider's actual
6 costs. Recognizing that reality, the regulations adopted
7 to implement the program allows participants in the
8 program to charge a fee to whom they provide a service to.
9 For a collector, that would be a generator -- on the part
10 of a recycler, that would be a collector -- a service fee
11 to cover uncovered costs, unrealized expenses, unrealized
12 revenue. Because businesses do need revenue to stay in
13 business.

14 And I understand John's concern here. The fact
15 is the rate that's being proposed is a rate that will
16 apply to this entire industry. And so everybody will be
17 operating against this new set of rates.

18 COMMITTEE MEMBER PEACE: So the rates are too low
19 they can charge the public then

20 CHAIRPERSON BROWN: And they do. They do it now.

21 COMMITTEE MEMBER PETERSEN: This is a market
22 driven. This is all market driven. The State is involved
23 in simulating a program to make this happen in the state
24 of California. Business guy running what I would consider
25 a recycling business that does other things to help

1 offsets costs. It's like recycling when we first started
2 that way back in the 70s. It was we knew the glass market
3 was going here. We had paper market pickup here. We had
4 diversification in the marketing strategies and that's
5 where our income came from. And sometimes we lost money.
6 A lot of times we made money.

7 That's the theory of recycling. Be as fluid as
8 you can in covering your cost. It has to be from other
9 sources. If you don't do that, you get yourselves in big
10 trouble. Because this program was not designed to support
11 just a business. That does in this kind of work.

12 CHAIRPERSON BROWN: We probably will come back to
13 you and ask you, but I want to allow our other speakers to
14 participate in this dialogue and. We have two other
15 speakers who want to address some issues and then we can
16 continue to ask questions. Mark Murray with Californians
17 Against Waste.

18 MR. MURRAY: Thank you, Madam Chair. Mark Murray
19 with the environmental group Californians Against Waste.

20 I want to start with seeking a clarification from
21 Jeff, because I've been confused during the course of this
22 discussion. So --

23 CHAIRPERSON BROWN: I can't understand why.

24 MR. MURRAY: So Jeff, just to clarify, the cost
25 analysis that you presented in your report reflects costs

1 and it has 2007. Those were the reports that were
2 submitted in March of 2007?

3 CHAIRPERSON BROWN: No. March of '08.

4 MR. MURRAY: So the 2007 costs that you have in
5 your report, those are reflective of the reports that you
6 just got on March 1st, 2008; is that correct?

7 BRANCH MANAGER HUNTS: Absolutely.

8 MR. MURRAY: I was confused about that. Thank
9 you.

10 Based on the information that I think that was
11 submitted by the recyclers and accepting all of that
12 information as being factual, I think the math of the
13 calculation appears to be correct from our perspective.
14 And I think that it was the intent of the legislation to
15 assess the average cost of recycling. It was the hope
16 that during the course of the implementation of the
17 program that economies of scales would be realized and
18 that those would be reflected in hopefully a lower net
19 cost of recycling.

20 I'm concerned -- before give me the thumbs up.
21 I'm concerned about some issues raised by Mr. Shegarian
22 with regards to potentially fraudulent recyclers in the
23 system and maybe we haven't done a good enough job of
24 weeding them out. And if they are submitting reports that
25 maybe are completely out of whack with regard to what, you

1 know, has been submitted by other recyclers, it seems to
2 me that that is something that the Board will want to
3 review.

4 So I guess I encourage the Board maybe working
5 with DTSC to identify maybe if there are some recyclers
6 whose costs seem to be inconsistent with what some of the
7 other recyclers are doing. That maybe those should be
8 examined. A decision should be made as to whether or not
9 they should be included either now or in the future in
10 those weighted average costs.

11 My primary issue in terms of suggestion in terms
12 of modification of the staff proposal has to do with
13 implementation and the implementation date of this. I'm
14 not sure who wrote this screwy statute. But I'm sure he
15 was very well intentioned.

16 CHAIRPERSON BROWN: I'm not really who wrote this
17 screwy statute. Let's get him on the line and see if he
18 can clarify.

19 MR. MURRAY: He obviously made an error in the
20 implementation date of the payout issue in terms of making
21 this adjustment with the adjustment in the pay-in that the
22 retailers and consumers are making. At least he wasn't
23 clear enough in terms of legislative intent. But it
24 seems --

25 CHAIRPERSON BROWN: Because the legislative

1 intent is left to interpretation.

2 MR. MURRAY: That's right. That's right. And
3 he's probably not a legislator.

4 But it certainly seems that you would have the
5 flexibility to while making this decision about an
6 adjustment prior to July 1st implementing that. Thinking
7 of that the Legislature was clear in providing a decision
8 date on the pay-in of August and an implementation date of
9 the following January 1.

10 It seems to me that you would be within your
11 authority to use that same time line of six months -- five
12 months in terms of delaying implementation of this 18
13 percent reduction in the payout to collectors and
14 recyclers. It seems to me that given -- we have such a
15 successful program here in terms of the volume of material
16 that's coming through. And it is a bit of the roll of the
17 dies to put out a payment that's an 18 percent reduction
18 in the payment that's driven us to this level of success.

19 It is within the realm of possibility that some
20 recyclers and some collectors and recyclers have maybe
21 been using some of the funds from covered electronics to
22 do a great job of recycling stuff that is not covered by
23 the program.

24 I'm concerned that if there is this fairly
25 significant drop in revenue that one of the manifestations

1 of that might be increased export of the uncovered
2 material and other e-waste to developing countries and
3 more national geographic photos of that material. And the
4 last thing we want to see is California material
5 happening.

6 As you may know, I'm working on a proposal to
7 expand the scope of this proposal, this program. It would
8 be very helpful to us -- and I think we have nice
9 convergence if the implementation of this payment
10 schedule, however it needs to be adjusted in the terms of
11 the collector payment and the recycler payment, could be
12 postponed until January 1 of '09. That would do two
13 things. It would give collectors and recyclers a little
14 more notice on that implementation. Number two, I think
15 it would create a goodly amount of pressure among all
16 stakeholders to drive an expansion of this program to
17 include in other materials. And hopefully with that
18 additional window we can reduce the amount of uncovered
19 material that might end up being exported.

20 So that's the thing I would like to ask you is
21 delay implementation of this payment until January 1 and
22 again with whatever adjustments to deal with the pay-in
23 and payout, whatever makes sense in terms of that
24 differential. So that's my message is delay until January
25 1.

1 CHAIRPERSON BROWN: Okay. If the author were
2 here and we could actually have a discussion with the
3 author about some of this, you know, the supposition that
4 there may be material that may be recycled -- maybe, but
5 maybe not, we cannot pay out for materials that are not
6 covered electronic devices. So we can't even suppose
7 there are. And we can't -- as much as we want to applaud
8 those responsible sustainably designed businesses who do
9 those, we can't require that of everybody. Because it's
10 not the law. And I mean, I know you know that. So that's
11 just a statement of fact. So expansion of the program I
12 know we've been seeking for some time.

13 MR. MURRAY: Absolutely recognize that.
14 Certainly. And Jeff's staff report -- very thoughtful
15 staff report -- did recognize that as being a potential
16 consequence, that there may in fact be an increase in the
17 export of uncovered material because it is within the
18 realm of possibility that --

19 CHAIRPERSON BROWN: And we have to assume that it
20 is California material because we collect reimburse for
21 it. And maybe some of the other states that don't have
22 the same kind of program there are also exporting, because
23 it's a federal issue. We can't do interstate commerce.

24 MR. MURRAY: We've done a better job. We've done
25 the most responsible job of any state in the union in

1 addressing this issue. Other states including the state
2 of Washington with their program, the Governor vetoed the
3 provision that would have had language in it that would
4 have restricted the export. So we at least provide some
5 market-based tools within our law and empower DTSC to put
6 some restrictions on that export.

7 So I think that we've at least tried in the
8 state, and it hasn't happened in other states. But
9 obviously that focus is on covered material. So I'm
10 asking you to just think about that consequence. And I do
11 believe you have the authority to implement this
12 consistent with the decision in August implementation in
13 January that we have for the retailer payment.

14 CHAIRPERSON BROWN: That's my question. But
15 that's my concern. And you know, we have a responsibility
16 for the solvency of this program. And now that we've
17 determined that the payment is in excess that we've been
18 paying, I'm comfortable with a prolonged -- or a partial
19 delay of three to four months to allow for businesses.

20 But if we go all the way to January, Mark, we're
21 acknowledging that we've over paid. We have an issue.
22 We've already directed as a Board and agreed to loan. So
23 in essence, is it irresponsible on our part to strap
24 ourselves with a longer period of loan and repayments and
25 interest that are required by law to continue to make this

1 program solvent.

2 So that's my concern with going beyond the three
3 to four months is that we're strapping ourselves into a
4 longer period where we're loaning money to this program
5 and requiring this program to then pay additional interest
6 back for the fact we delayed implementation beyond what
7 may be a reasonable amount of time, which is three to four
8 months to implement. I mean, we're talking six month
9 delay here.

10 And you know, I don't have -- I'm not a
11 statistician. I'm not an interest calculator anything
12 like that. But I have to understand and look at good
13 public policy as well and say is its good public policy to
14 delay this and strap ourselves with increased debt over
15 the long haul. That's a question I'm not ready to answer
16 yet. But I'm throwing that out as something we need to
17 consider in this discussion of when to implement.

18 MR. MURRAY: I appreciate that. But until you
19 take a vote of the Board on this fee schedule, then you
20 haven't acknowledged what the cost is.

21 So, I mean, there's lots of reasons why you might
22 not do that next week in terms of issues that have been
23 raised by me and others in terms of looking at this cost
24 of collection and recycling. So again, it's not a fact
25 until you've taken that vote.

1 And it seems to me that, you know, I have a
2 feeling that there are some stakeholders who aren't going
3 to be super excited about the other shoe when that drops
4 in terms of the need for adjusting the front end of this
5 and just from a just -- seems like having those two -- not
6 having made that final decision on the first shoe may help
7 with the second shoe.

8 CHAIRPERSON BROWN: Make you more sure footed?

9 COMMITTEE MEMBER PETERSEN: What shoe store is
10 this?

11 MR. MURRAY: I understand the issue you have. I
12 just think, you know, the work has been done at this point
13 in terms of the information and the staff report. And I'm
14 just not sure you're ready to make that decision next
15 Tuesday. But that shouldn't hold you up in starting the
16 work on the other shoe.

17 CHAIRPERSON BROWN: We'll make sure they're both
18 tied at the same time, too, but not necessarily together.
19 We're not tying those shoes together. They may fall at
20 the same time.

21 Okay. Thank you. Any other questions for Mark?
22 Dennis Kazarian. Next speaker.

23 MR. KAZARIAN: I have no shoes on. I'm going to
24 make that clear. I have no shoes on.

25 I commiserate with my friend, John Shegerian,

1 Mark, who's done enormous work on this to begin with. But

2 I do disagree with some stuff.

3 The net cost report -- I complain about it all
4 the time, because I don't think it actually tells us what
5 we really want to know. And I don't think it really is
6 accurate. But I do honestly believe that if it's
7 inaccurate the rate is higher than lower. And that I
8 believe that would be the net result. That's my opinion,
9 and only my opinion.

10 I also believe that by cutting the rate, whatever
11 the rate is, it doesn't matter to me as a recycler,
12 because I don't get anything you're talking about. The
13 number that you put there does not apply to me. There's
14 only one number, and that's 39 cents. After that,
15 collectors are trying to get whatever they can get out of
16 that, whether it's 48 cents. If you made it 58 cents and
17 said, Dennis, you get 50 cents out of the 58, it wouldn't
18 matter. That price is fictitious. There's only one
19 payment.

20 You can say collectors get this and recyclers get
21 this, but unless you can enforce it -- I don't know how
22 that happens -- but there is only one price. And I think
23 the recyclers, to be honest, are the guys who are taking
24 it in the shorts.

25 We do what we're supposed to do. Those of us who

1 do what we're supposed to do and take this material apart,
2 there is a cost to us. And, you know, we're being held on
3 the e-waste issue, which we're trying to work with Mark
4 and all of us to expand this program, because that
5 material comes to us and there is a cost to break that
6 down. And so we're taking it as I don't want to say
7 blackmail, but as blackmail we're taking it for nothing
8 and dealing with it. Otherwise, it goes somewhere else.
9 And it's going to somebody else who isn't doing what we
10 do. And then it goes out of California. Okay. I don't
11 want to get into that because that -- I do. But that's
12 not going to solve your issue today. You know.

13 On the timing of this thing or when it's
14 implemented, that's up to you. That's up to legal
15 counsel. I mean, the issue was clear. There's an intent
16 there. There's a law here, you know.

17 But the bottom line is, you know, if you've
18 decided if the net cost reports have shown that we are
19 paying out too much, which I think we all knew that to
20 begin with -- we won't go back to that story. There is a
21 timing issue. What is that timing issue? You know,
22 technically if you would enforce or somehow arrange to
23 enforce what should have happened, was no collector would
24 get paid until the State approved and paid the recycler,
25 who then has to pay the collector. That doesn't happen

1 anywhere. Every collector wants to get paid and probably
2 gets paid before he gets any paperwork into the system.
3 He gets paid and then we're kind of stuck with doing this.

4 BRANCH MANAGER HUNTS: Though recyclers do have
5 the option of withholding payment for 90 days.

6 MR. KAZARIAN: Yes. Absolutely. And if you want
7 to be in this business -- if you don't want to be in this
8 business, go ahead and do that. That should be in the
9 law. It should say if you don't want to be in this
10 business, pay them in 90 days.

11 You know, we know that what is intended in this
12 law, which has some serious problems, which we need to
13 redo -- that's not what we're talking about today. But
14 what it says and how it really works are two different
15 things happening. Okay. And we're trying to live in
16 those. We seriously are trying to do the right thing and
17 live within that dichotomy of what it says and what really
18 is happening. And we have to live with those realities.
19 That's why we would like to obviously come back and talk
20 about this legislation at a later time and what needs to
21 be done.

22 It is the best program. It has created the most
23 amount of e-waste. It has generated funds. Californians
24 ought to be proud of what they've done to stand up and
25 have this program. But it needs some tweaking to

1 seriously make it happen.

2 So I just say to you, I know this is a tough
3 decision. I think we ought not to be talking this. I
4 think what we ought to be talking about is if you're going
5 to raise the rate to the consumer at the retail effort, I
6 think you ought to do that prior the January. I think you
7 ought to do that like in November so we get all that sales
8 revenue coming in for Christmas. But I'll leave with you
9 that thought.

10 CHAIRPERSON BROWN: Unfortunately, the author --
11 or the sponsor, not the author, the sponsor felt very
12 clearly about what our --

13 COMMITTEE MEMBER PETERSEN: I love all you
14 recyclers and I understand how this all works. Okay.

15 MR. KAZARIAN: That's all I want to say.

16 CHAIRPERSON BROWN: Thank you, Dennis, for
17 participating.

18 I do have one late -- we are just about ready to
19 wrap up our discussion. But if you would like to speak
20 briefly to this item, Janice Oldmeyer.

21 MS. OLDMEYER: Yes. Thank you, Madam Chairman.
22 I'll make it brief.

23 I'm with Onsite Electronic Recycling. We're a
24 small recycler compared to Dennis and John. But I do
25 really want to just reiterate some of the points they

1 made, particularly Dennis, and some of the points Mark
2 made. My real concern is the electronic, the non-CW
3 electronic. I know that's not really something that has
4 any bearing on the fee for CEWs. But we are doing the
5 right thing with those. And as a small company, it's very
6 hard to do the right thing. We can sell them overseas if
7 we want to and make a lot more money.

8 I do think that lowering the fee 18 percent is
9 significant. And I think that's going to force a lot of
10 recyclers to look at the other options. A lot of the
11 currently responsible recyclers to look at that. We
12 wouldn't do that, but it's beginning to be a significant
13 impact on our business on implementation.

14 I agree that five weeks is not enough time for
15 implementation. Just from business practices to change
16 the fees you're paying out to re-work your contracts, you
17 know, five weeks is very minimal. That's all my comments.
18 Thank you very much.

19 CHAIRPERSON BROWN: Thank you.

20 And again, we can not control the payments and
21 the good work that you do. I mean, we cannot pay for
22 that. It cannot be contemplated in the repayment schedule
23 or the recovery fee for covered electronic waste.

24 We are working on it. I know we have a very
25 strong sponsor working with the Legislature to try to

1 expand the program, and there is a lot of support for
2 that. But you're right. In this consideration, we can't
3 take that into consideration.

4 Gary.

5 COMMITTEE MEMBER PETERSEN: Well, Madam Chair, I
6 look at this as like the scrap business, the original
7 recycling business. You have a market out there where you
8 sell your product. And I understand that some of the
9 collectors and including the electronic waste as part of
10 the -- Dennis says it's a necessity to take so you can
11 stay in business. I got all that.

12 But, you know, across the board this thing is
13 going to come down. I mean, these prices, this is going
14 to have to happen because we have to be solving this.

15 Secondly, I turn around and being in the business
16 when they lowered my aluminum can price. Everybody came
17 in the door, it's down five cents. They all throw a fit
18 and they say, well, we're going someplace else. Go ahead.
19 I mean, that's the way it works.

20 So, for me, I look at this recycling business.
21 We all understand it. We work in it. I worked in it for
22 35 years, and I think we're on the right track. However,
23 I like what Jeff came up with is this roll out to help
24 whatever it is to give some relief someplace to some of
25 those who may be have contracts that are overextended on

1 their contracts, et cetera.

2 So with that, I'm with you on this, Jeff. And I
3 like the roll out idea that you came up with.

4 CHAIRPERSON BROWN: So in the Dennis mode, it
5 goes from 48 to 43 until September 1st and then down to
6 39. By September 1st if there is no one and then the
7 other, it's just one fee. Then the phase-in will look
8 like a one fee to 43 cents until September 1st and then a
9 one fee even though in regulation it actually splits it in
10 two.

11 BRANCH MANAGER HUNTS: With regulation there's
12 two payments. One is the recovery payments --

13 CHAIRPERSON BROWN: I know what regulation is,
14 but reality. The reality of what's going. The street
15 talk.

16 BRANCH MANAGER HUNTS: 48 to 43 to 35.

17 CHAIRPERSON BROWN: Okay.

18 COMMITTEE MEMBER PETERSEN: Dennis dollars.

19 CHAIRPERSON BROWN: Rosalie.

20 COMMITTEE MEMBER MULÉ: Thank you, Madam Chair.

21 I haven't been in the recycling business as long
22 as you, but I've been in the recycling business now for
23 20 years this year. And I'll tell you something. I
24 learned a lot in very first few years by mistakes that I
25 made in how to price your business. And now all business

1 people know that when they go into business they have to
2 price their product or service based on a number of
3 things.

4 And again, in recycling, you don't depend on a
5 payment from the State or the market value of a commodity
6 to dictate how you are going to conduct your business and
7 develop your business model. You develop your business
8 model based on all things that you take into consideration
9 in operating your business. And that's collection costs.
10 It's transportation costs. It's overhead costs, et
11 cetera, et cetera, et cetera.

12 And again, as Gary was saying earlier, most
13 people that are in the business have based their business
14 model not just on payments from the State or not just on
15 the value of the commodity, but again they base their
16 business model on overall cost. So it may include
17 charging a customer for curbside pickup of the CEW. But
18 that's up to that business person and that company to make
19 those decisions. And so again, this is that side of it.

20 Now, we as regulators here have a responsibility
21 to the law to do the right thing. But more importantly,
22 we have a fiduciary responsibility to look at again what
23 the law tells us to do is to look at those net cost
24 reports. We may think they're right. We may not think
25 they're right. But again, they were supplied to us with a

1 signature under penalty of perjury. These statistics,
2 these numbers, this data that we give you is truly
3 factual. And so then we have a responsibility based on
4 those net cost reports to look at what it is that we
5 should set as the rate.

6 And so for me, I support staff's recommendation.
7 I also support the alternative implementation schedule to
8 phase it in so to speak that I hope that will give all of
9 you operating your businesses adequate time to adjust your
10 business model appropriately.

11 Thank you, Madam Chair.

12 CHAIRPERSON BROWN: Thank you, Member Mulé.

13 Any other comments or questions?

14 Okay. We can either entertain a motion at this
15 time or we can entertain a motion at the full Board
16 meeting on Tuesday giving us adequate time to re-look at
17 the fee and look at the payment schedule and be
18 comfortable with the direction we're going before we look
19 at this and give us or stakeholders time to investigate
20 DTSC and the fraudulent allegations, but I think we've
21 exhausted that argument.

22 COMMITTEE MEMBER PETERSEN: I think we should
23 defer this to the Board so we can have Wes Chesbro here
24 for a vote.

25 CHAIRPERSON BROWN: We can put this over to the

1 full Board for consideration with -- maybe no
2 presentation. Just discussion. So let's do that.

3 I'd like to put this item over to the full Board
4 meeting as a full Board agenda item. But you do not need
5 to do a re-presentation. If there is any additional
6 testimony, that will give stakeholders an opportunity to
7 take testimony and that's how we'll leave the
8 presentation.

9 BRANCH MANAGER HUNTS: That would allow us to
10 revise the resolution.

11 CHAIRPERSON BROWN: Okay. Great. So no
12 presentation. But if there is additional stakeholder
13 input that was different than today, then we can take
14 additional input. I don't think we need to re-visit all
15 the issues that were discussed as part of the
16 consideration item today.

17 With that, this Committee meeting is adjourned.

18 (Thereupon the California Integrated Waste
19 Management Strategic Policy Development Committee
20 adjourned at 1:10 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 27th day May, 2008.

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